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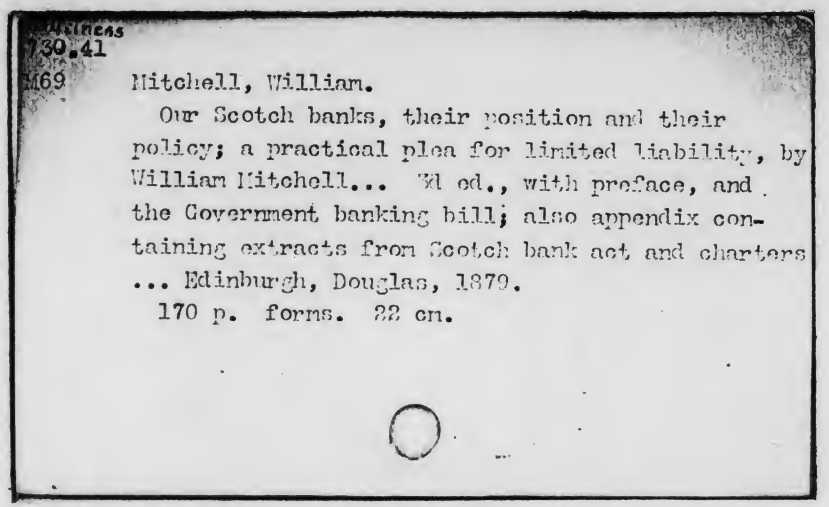

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SCOTCH BANKS
AND
LIMITED LIABILITY

THE GOVERNMENT BANKING BILL

W. MITCHELL

Gibson's own copy

OUR SCOTCH BANKS

THEIR POSITION AND THEIR POLICY

A Practical Plea for Limited Liability

BY

WILLIAM MITCHELL, S.S.C.

THIRD EDITION,

WITH PREFACE, AND THE GOVERNMENT BANKING BILL

ALSO

APPENDIX

CONTAINING

EXTRACTS FROM SCOTCH BANK ACT AND CHARTERS;
TABLES OF STATISTICS OF SCOTCH, ENGLISH, AND COLONIAL BANKS;
CLAUSES OF COMPANIES' ACTS, 1862 AND 1867, PROVIDING FOR
LIMITED LIABILITY OF BANKS, ETC. ETC.

"If hindrances obstruct thy way,
Thy magnanimity display,
And let thy strength be seen;
But, oh! if Fortune fill thy sail
With more than a propitious gale,
Take half thy canvas in."

HORACE. Book II. Ode 10. *Cowper's Translation.*

EDINBURGH: DAVID DOUGLAS
1879

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PREFACE.

THE GOVERNMENT BANKING BILL.

'So late as my own younger days an English minister would have 'paused, even in a favourite measure, if a reclamation of national rights 'had been made by a Member for Scotland, supported, as it uniformly then 'was, by the voice of her representatives and her people.'—Letter of Malachi Malagrowther, Esq., 1826.

In dedicating anew to the Shareholders of our Scotch Banks the third edition of the Notes in which nearly six months ago I ventured to discuss their position and their policy, it is under the conviction that the true interests of the Shareholders are identical with those of the people. If these Notes demand still any apology from their author, I would base it mainly on the fact that they emanate from one who, as regards the Banking interest, is an outsider, claiming, in default of technical knowledge, the merit only of an unbiassed and disinterested mind.

In one respect, perhaps, no Scotchman who, upon the failure of the City of Glasgow Bank, took part in the discussions it gave rise to, could be regarded as other than a party concerned. The disaster was so crushing to its immediate victims, and the consequent depreciation of property in Scotland was so widespread, that one was apt to consider the remedies suggested as if they required application to Scotland alone. This may to some extent account for any narrowness of view in the following Notes,

which are now submitted precisely as they were published in November 1878. Having naturally interested myself in the discussions which our own great Bank failure and the minor casualties which followed it in England, have created in the Press of the United Kingdom, I am free to confess that, to my mind, the subject has assumed larger proportions, and it is matter for congratulation that the remedies which have commended themselves to general approval are now to be provided by means of an imperial measure.

The '*Bill to amend the Law with respect to the Lia-*
'*bility of Members of Banking and other Joint-Stock*
'*Companies and for other purposes,*' which I propose now to examine, has been introduced by the Chancellor of the Exchequer, the Home Secretary, and Sir H. Selwin-Ibbetson. Sir Stafford Northcote, as Chancellor of the Exchequer, was chairman of the Select Committee on Banks of Issue appointed in 1875, and in perusing the report of the immense body of evidence taken by that committee, one cannot fail to be impressed by the intimate acquaintance with the subject displayed by the chairman in his interrogatories, and above all by the fair and judicial spirit in which he conducted his enquiries. The Home Secretary, I believe, is a practical banker, and aided doubtless as they would be in the preparation of the Bill by the consummate ability which always distinguishes, and never more than at this moment, the highest judges and the law officers of the Crown, any humble tribute which I could pay to the skill with which the Bill is drawn might appear presumptuous.

My object will be—having attempted an enquiry into the causes of bank disasters in Scotland, and suggested

remedies which it is the object of the Bill to make available—to enquire whether, and if so in what respect, the Bill might be amended in committee so as to be more practically useful. I propose also to avail myself of this opportunity of explaining the circumstances which have given rise to that provision of the Bill which affects Scotland in a somewhat invidious manner, and to submit with the utmost deference such practical suggestions as occur to an ordinary man of business in thus treating this important subject.

In pursuance of this object, it does not appear to me that any better order of treatment could be devised than that followed by the Chancellor of the Exchequer in the speech made by him on 22d April 1879 on the motion for leave to introduce the Bill. The speech and the Bill divide themselves naturally into seven heads, and under each of these will be given the portion of the speech relating thereto, followed by such references to the corresponding portions of the Bill and observations thereon as appear to be necessary—the Bill itself being appended. The speech is given as reported in the *Times* newspaper.

I.—Main Objects of Bill.

(1) *To enable a Bank already Registered to register anew with Limited Liability; and* (2) *To authorise Reserved Liability.*

Speech. What I would wish to call especial attention to is the two great inconveniences which have been discovered in our system, and to which attention has been drawn. They are these: In the first place, as hon. gentlemen are aware, we have two, or indeed three, systems for the formation of joint-stock banks. They may be formed on the principle of unlimited liability, on the principle of liability limited to the holding of each individual shareholder, or on the principle of liability limited by guarantee. The third form is, I believe, very

little used, and practically, therefore, there are but two forms in use—the one being unlimited liability, and the other a liability limited to the amount of the shares held by each individual shareholder. According to the provisions of the principal Act of 1862, it has been optional for any company to register itself either as limited or unlimited, and in many cases joint-stock banks have availed themselves of one or other of these alternatives. It was perfectly competent to any joint-stock bank to register itself in the first instance with certain precautions as a limited company, and many banks used that power, which was supposed until recently to be a continuing one, and that a bank which had been originally registered as an unlimited corporation could at any time be re-registered afresh, under the other condition, as a limited concern. When attention was called to the question by the failures to which I have referred, it was found the supposed power did not exist, and, as a consequence, a great deal of uneasiness, and I think I am not going too far in saying alarm, was created among the holders of bank shares, who found themselves in a position of liability from which they could not extricate themselves. There are many persons who suppose that the unlimited liability of shareholders in a bank is a very great security to the public, but there are considerations on the other side which must not be lost sight of. In the first place, when a bank conducted on the principle of unlimited liability fails for a large amount, it involves a large proportion of the shareholders in nothing short of absolute ruin, and the consequence is that when such an event occurs the shareholders who have means to escape from the liability are tempted to take measures for realising their property and withdrawing from the danger to which they are subjected. These, of course, are only exceptional circumstances, which may occur on a particular occasion; but besides that accidental and occasional inconvenience, there is also a probability that we shall find ourselves subject to a greater inconvenience—a larger and more permanent one; and that is, that persons of undoubted means will fight shy of joining societies in which they may be exposed to such serious consequences, and the consequence will be that gentlemen of large means, who are just those whom the public would desire to see occupy the position of shareholders in large institutions, will be unwilling to put themselves in that position, and will withdraw; and that your unlimited liability will lead to the substitution of a very inferior class of shareholders, whose liability, although unlimited in name, will not be worth so much to the creditors of the bank as might be the limited liability of a very superior class of persons. We have therefore before us the inconvenience to which I have adverted of the law being in such a state that a company cannot now change itself from being unlimited to its being limited; and there is another inconvenience, which is that the law seems to give only one alternative between the two conditions of companies absolutely unlimited and companies in which liability is

limited to the amount of the shares; whereas there are inconveniences in the one condition, so, on the other hand, where the liability is limited to the amount of the shares, especially if the shares have been largely or nearly all called up, there is very little or no reserve for creditors to come upon in the event of the failure of the bank and the loss of its capital. Now, that suggests the idea that it might be desirable to find some intermediate condition between that wholly limited and that wholly unlimited liability, and such an intermediate position appears to be suggested by the position which was given to a good many of our colonial banks. In many of the cases of the charters granted to colonial banks, the liability is not limited to the amount of the shares, and neither is it entirely unlimited; but it is limited to the multiple of the amount of each share—that is to say, where the shares of a bank are £100 apiece, the liability of the holders may be, on the whole, £200 or £300 apiece. It appears to be very desirable that some provision should be made which would at all events render it competent to banking companies to adopt that constitution, and in two words I may say that the main object of the Bill, which I am now about to introduce, is to enable banking companies to re-register themselves, either as limited companies under the existing law, or re-register upon a footing similar to that which I have just been describing as being the footing adopted in many cases by the colonial banks. I am anxious to propose as little as possible in the way of Government interference with the management of institutions of this kind. There is a natural tendency on the part of many persons when any great catastrophe happens, to call at once for Government interference and assistance. I am very chary indeed in making proposals in that direction, and the Government do not propose that anything should be adopted in the way of legislation that should be of a compulsory character. We propose simply to remove the obstacle which now has been found to exist, and which prevents banks from taking the form and constitution which suits them best.

The clauses of the Bill which come under this head are as follows:— Page 61.

1. To enable a Bank already registered to register anew with Limited Liability (sec. 6).
2. To authorise Reserved Liability (secs. 4, 5, and 12).

The preliminary part of the Chancellor's speech above quoted explains clearly and briefly the main objects of the Bill. Its necessity, as observed in the *Times* of 23d April

1879, has arisen from 'a legislative accident and oversight. 'Banking Companies, which had been registered as un- 'limited under the Act of 1862, could, it was supposed, 'be registered afresh with limited liability. It was a 'complete surprise to directors and managers, when they 'came to scan their position, and take counsel's opinion, 'to be told that their power of procuring registration on 'the footing of limited liability was exhausted. No one 'has questioned the propriety of enabling Banks to sur- 'mount this technical barrier.'

But in legislating for the removal of this obstacle in the way of limiting the liability of Bank shareholders, the Government, while wisely abstaining, on the one hand, from dealing compulsorily with Banks, and leaving them (except in one unfortunate instance) entire freedom of action,—so that, except as regards Bank accounts and their audit, the Act will be merely a *permissive* or *enabling* measure,—have, on the other hand, indicated, through the Chancellor, a policy decidedly in favour of a limitation of the liability of the shareholders in all Joint-Stock Banks. This policy had, with remarkable celerity, secured the almost unanimous approval of the country, so much so, that it will be unfortunate if the Bill be not so framed as, while removing the legal barrier to the re-registration of unlimited Banks, to offer such inducements towards a standard system of limited liability as may lead without delay to its general adoption by all Banks. The opportunity is a golden one for bringing about uniformity in the Constitutions of all Banks, and an improvement in the system of Note Issues, without interfering in any way with that freedom of action which is so desirable in the interests of trade.

The suggestions which I am to make with that view will be submitted under their appropriate heads.

As regards the sections coming under the first head, it seems desirable that *Section* 4 should be so framed as to admit not merely of unlimited companies but of limited companies already registered registering of new as reserved liability companies. All existing companies, in fact, whether limited or unlimited, registered or unregistered, should be dealt with on the same footing, and afforded the same facilities and privileges. It may be left, perhaps, to the various classes of companies concerned to take legal advice as to the practicability of their severally availing themselves, if so disposed, of the provisions of the proposed Act; and, in the case of our older Banks, constituted by Acts of Parliament or charters, it is most desirable that, if these seem to render it even doubtful whether they can avail themselves of the Act, it should contain a general clause so framed as to remove all such doubts.

Sections V., sub-sec. 3, *and XII., sub-sec.* 3 (*a*), contemplate, as explained by the Chancellor, that reserve liability shall be only of one kind, viz. 'A sum equal to, or some 'multiple of, the *nominal* amount of the share in respect 'of which it is payable.'

This raises what seems to me the most important question under the bill, namely, whether it is not possible to arrive at a *standard* of reserve liability, and so to encourage its adoption as to create something like a uniform system easily understood by the public. Aiming at this object with reference to Scotch Banks alone, I suggested last November that 'if the Act were to provide that the 'liability of the shareholders of all the Scotch Banks 'should extend to at least one-half more than the *paid-up*

See p. 136.

'stock or shares held by them respectively, without prejudice to any larger liability under their respective regulations, it would form part of the public statutory law of the kingdom that all Bank shareholders in Scotland (as in the case of the Bank of Scotland and perhaps also the Royal Bank now) were liable to the creditors of the Bank in *at least* one-half more than the capital of the respective Banks paid up for the time being.' The introduction by the Chancellor of this new species of liability seems to afford an opportunity for securing a standard system without compulsion, and merely by encouragement.

The first *desideratum* is to agree on the standard of liability to be aimed at. I mentioned in my Notes that in the Canadian Banks the liability was 'limited by law to a 'call of cent per cent of the *subscribed* shares,' *i.e.* 'the 'nominal amount of the share,' a sum equal to, or some multiple of, which is to constitute reserved liability under the Government Bill. The objection to this, however, is the uncertainty in which the *amount* of the liability would still be left. If the subscribed or nominal shares of a bank are £100 each, of which only £50 is at first paid up, and there is a reserve liability equal to the nominal amount of the share, being £100, the liability of the shareholders would be £150. But assume that, for the purpose of extending its business or otherwise, the remaining £50 per share were to be called up, the liability of the shareholders would be reduced to £100. To get rid of this uncertainty, I would suggest that the Bill should provide also for a reserved liability 'equal to, or some mul- 'tiple of, the *paid-up* amount of the share in respect of 'which it is payable.' The *paid-up* capital is in such cases the important figure. It alone affords any criterion

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of the realised resources of the Bank and the probable extent of its transactions and liabilities. If, therefore, the public were satisfied (as I think they are) that a liability equal to the amount of capital, *paid up for the time being*, would form 'such a reasonable amount of uncalled capital 'as will afford a sufficient guarantee to depositors, in addi- 'tion to the paid-up capital, without imposing on the 'shareholders an undue liability beyond the amount paid 'on their shares,' that might form the standard of reserve liability for the whole country, and might be indicated by adding simply the letter 'R' to the name of the Bank in the manner to be afterwards more particularly explained.

Notes, p. 129.

The only other suggestion that occurs to me under this head has reference to the following passage in the Chancellor's speech: 'When a Bank conducted on the prin- 'ciple of liability fails for a large amount, it involves a 'large proportion of the shareholders in nothing short of 'absolute ruin, and the consequence is that *when such an 'event occurs, the shareholders who have means to escape 'from the liability are tempted to take measures for 'realising their property and withdrawing from the 'danger to which they are subjected.*' A striking example of this occurred in the case of the Caledonian Bank, and is referred to in the postscript to my Notes. The all but ruin of that Bank was ascribed by the directors to 'the timid 'shareholders, who, impelled by panic, have endeavoured 'to save themselves at the expense of others.' Their panic, which, happily, turns out to have been a most unreasonable one, arose from the fact that the Caledonian held four shares of the City of Glasgow Bank. The liquidators of the latter Bank, finding that some wealthy Caledonian shareholders were selling out, insisted on the

Page 8.

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register of members being closed, but as section 33 of 'The 'Companies' Act, 1862' does not authorise a company to close its register for any time 'exceeding in the whole 'thirty days in each year,' and these days had previously been exhausted for all practical purposes, the safeguard desired was found impracticable, and there seemed no alternative but a liquidation order, which was accordingly
Page 144. applied for. If the suggestion in my Postscript that 'the 'recurrence of similar results may require to be provided 'against by conferring on directors an unlimited power of 'closing the transfer-book,' subject to some right of appeal on the part of aggrieved shareholders, commends itself as a suitable protection against the scares to which even shareholders of limited banks are so subject, the present Bill might afford a suitable opportunity of providing the remedy.

II.—Simplification of Conditions on which Limited Liability attainable.

Speech. Having now stated what the principle of the Bill is, that we shall give facilities for re-registration, it becomes a question what the method of procedure should be. According to the present Act, it would seem to be necessary that individual notice should be given by any bank desiring to change its position and become a limited liability bank—notice, that is, to each individual who was in any way in the position of a creditor or customer of the bank. That is a matter of very serious magnitude, and it seems difficult to find means of making individual communication to every customer. Therefore, my proposal is that we should only require certain advertisements of a character which would give a general publicity to the change about to be made in the position of a bank. Advertisements, for example, in the newspapers which circulate in the vicinity of the place in which the bank has its offices, and, of course, notices should be put up in the offices of the bank itself; and this we propose should be sufficient to admit of a bank in a certain time changing its position.

Section 7 of the Bill seems well framed to give effect to the objects above referred to.

III.—Title of Banks of Reserved Liability.

Speech. I have spoken of the position as an intermediate one between limited and unlimited liability, and the question naturally arises what title should be given to the banks which may take that position. There is a great deal of sensitiveness on that subject. It has been one of the great stumbling-blocks which the representatives of the banks have urged on the Government in the various representations which they have made to us. They have said, "Not only is it technically and legally difficult to change our position from that of unlimited to that of limited companies, but we have, moreover, a feeling of reluctance in making that change to take the name of 'limited,' because we fear it may cause a great deal of misunderstanding, and may injure our credit." They are, therefore, naturally unwilling that any term should be adopted which should appear to shake the public confidence in them. It is, however, somewhat difficult to know what sort of term to adopt which will at once express the real condition of these banks—that their liability is limited—and not to alarm the public generally by leading them to suppose that it is more limited than it really is. I propose that the term that should be used in describing banks of this intermediate class should be the term "Reserve liability," and that a bank in such a position should be spoken of as a "reserve liability bank." It is an awkward phrase, but if the ingenuity of any hon. member can suggest a better I shall have no scruple in taking the suggestion into consideration. There must, of course, be certain notices and certain proceedings, like the meetings of shareholders; but these are all matters of detail, with which I need not now trouble the House. But the necessary conditions being complied with, I propose that these banks shall have the power of assuming the position of reserve liability banks. That is a proposal which, so far as the great body of non-issuing banks is concerned, seems to me to be a simple one, and one which I think will meet the necessities of the case.

The new title which the Chancellor submitted with so much diffidence is provided for in section 5, sub-section 1 of the Bill. That there is sometimes a good deal in a name is evident from the anxiety on this head which appears to have been expressed by the Banks, and their sensitiveness (in which, when one contrasts the antiquity of our Banks with many of the mushroom companies known as 'Limited,' one cannot but sympathise) seems to afford an opportunity of securing the uniform amount of reserved

liability so much to be desiderated. I would suggest, therefore, an addition to the sub-section above referred to, which might read thus:—'(1.) The words 'reserve liability,' or 'limited by reserve,' shall form part of the name of every reserve liability company, *subject, in the case of Banks, to abbreviation under license from the Board of Trade as hereinafter provided.*' The substantive clause giving effect to this suggestion might *empower the Board of Trade, on being satisfied that any Banking company has been duly registered as a reserve liability company with an amount of liability attaching to each share equal to the paid-up amount thereof for the time being, and has duly complied with the provisions of the Act as regards the audit and publication of its accounts, to issue a license to such Banking Company authorising the substitution of the letter* R *after its name for the words 'reserve liability,' or 'limited by reserve.'*

By introducing thus what would probably come to be regarded as a mark of distinction, I should expect most of the objections of bankers on the ground of name to be removed, and that a uniform standard of 'reserve liability' might gradually be attained.

IV.—Banks of Issue and Ranking of Notes.

Speech. Then, of course, comes the question of banks of issue, and I have more than once stated in this House—and the same distinction has been repeatedly taken by preceding Governments and generally approved by the House—that there is a broad difference between the business of banking and the business of issue. While, on the one hand, it seems to be our duty, with regard to banking, to place as few restrictions as possible upon it, when it comes to a question of issue, different considerations, in my opinion, apply, and the State has the right, at all events, if not the duty, imposed upon it to regulate the issue. There is a great difference between the position of a man who voluntarily deposits his money in a bank, or otherwise enters into

relations with it, and the man who takes from another a bank-note which, practically speaking, he can hardly refuse, and which he is liable to find to be worth nothing. It has been suggested that the present system of issues in this country is one which is of a temporary, and not of a very satisfactory character, and that the time must come when some change shall be made in it. No doubt there is a great deal to be said for taking up this whole question and endeavouring to deal with it, but it is a question which I do not think at the present time it would be desirable for us to grapple with. It would lead to very great difficulty, and a measure which is really one of somewhat pressing importance might be jeopardised if we were to weight it with an attempt to deal with it on the principles on which I should like myself to deal with the whole issue question. If we do not attempt to deal with this question on a broad basis, we must, at all events, take care in what we are doing that we do not put fresh difficulties in the way of dealing with it whenever it is considered the proper time to do so. What is the position, at the present moment, of issue banks which become banks of limited liability? There are, I believe, a few such, some four or five, which are now banks of limited liability which have the privilege of issue. Hon. members, who are acquainted with the Joint-Stock Companies' Act of 1862, will be aware that there is a clause of that Act, I think the 182d, sometimes known by the name of Lord Overstone's Clause, which provides that, where a bank of issue becomes a bank of limited liability, the limitation of liability shall not extend to its note issues. The clause is one which is rather complicated, and it is a little difficult to make out from it what the precise operation would be, in the event of such a bank becoming insolvent, in what order and in what way the notes would be met. I propose to alter that section so as to make it somewhat clearer than at present, and to make it applicable to all banks which have the right of issue, which may become either limited banks or banks of reserved liability. I propose to provide in substance that the assets of the banks shall go, in the first instance *pari passu*, for notes and for general liabilities, and that the separate assets of the partners shall be responsible for the balance that may be due on account of the notes. The precise way in which it is done is best shown by the clause, which was rather a difficult one to draw; and I should rather the Committee would wait to see the words. That would be a provision which would meet fairly well the case of the English banks. That case, as the Committee are aware, is one of a comparatively simple character, because in the case of an English bank which has the right of issue, the total amount of issue is limited by the terms of the law, and cannot be exceeded.

The amendment of the law to which under this head the Chancellor has so prudently restricted his Bill, will be found in section 9.

Appendix, p. 163.

This section repeals Lord Overstone's clause—section 182 of 'The Companies' Act, 1862,'—and I venture, with all deference to the high authorities by whom the Bill has been framed, to remark, in the first place, on the very extensive terms of that clause, and on the fact that no counterpart thereto is to be found in the clause which it is proposed to enact in its place. Lord Overstone's clause (omitting its provision as to the marshalling of assets) is as follows:—'No banking company claiming to issue 'notes in the United Kingdom shall be entitled to limited 'liability in respect of such issue, but shall continue sub-'ject to unlimited liability in respect thereof, . . . 'and the members shall be liable for the whole amount 'of the issue, in addition to the sum for which they would 'be liable as members of a limited company.' This very general provision is not repeated in the section of the Bill which it is proposed to substitute therefor, and this raises the question whether its omission may not effect a change in the law. So far as regards England, Lord Overstone had no occasion to express his clause so widely, for in

See p. 34.

1826, by 7 Geo. IV. c. 46, it was enacted, as regards Joint-Stock Banking Companies, which were thereby authorised for the first time to issue bank-notes in England, 'that every member of any such corporation or copartner-'ship shall be liable to and responsible for the due 'payment of all bills and notes which shall be issued, 'and for all sums of money which shall be borrowed, 'owed, or taken up by the corporation or copartner-'ship of which such person shall be a member.' Lord Overstone might therefore, as regards English banking companies, have contented himself with providing that their registration as limited liability companies

should not affect the unlimited liability of the members for the notes issued. Having regard to the much wider terms of the clause, the question seems to arise,—with special reference to the three Scotch Banks which as corporations claim that their members are not subject to any liability beyond the amount of the stock of the Bank already subscribed and paid for,—whether this clause was not intended to impose on the members, as well as the stock of all banking companies in the United Kingdom, unlimited liability for the notes issued by such companies. If this be so, it might not be expedient to repeal Lord Overstone's clause, except in so far as regards the words omitted in quoting it above, viz., '*and if necessary the 'assets shall be marshalled for the benefit of the general 'creditors.*'

Perhaps a more practical question is raised by another suggestion, which I venture to submit, with reference to this section of the Bill, namely, that the last clause of the first paragraph of the section should be amended by the insertion of the words in italics, reading as follows:— 'But in case the general assets of the company are, in the 'event of the company being wound up, insufficient to 'satisfy the claims of both the note-holders (*so far as not 'specially secured*) and the general creditors, then the 'members, after satisfying the remaining demands of the 'note-holders, shall be liable to contribute towards pay-'ment of the debts of the general creditors a sum equal to 'the amount received by the note-holders out of the 'general assets of the company.'

This clause in the Bill has been ingeniously framed with the object apparently of preventing a race for payment between note-holders and depositors in the event of

a Bank failure, and at the same time to secure to the note-holders the unlimited liability of the shareholders of the Bank. So far I have no suggestion to make, but if it shall please the Government to adopt the parenthetical reference to special security for the note-holders inserted above, the result might be to encourage such security to note-holders. In the historical account of English legislation on the subject of bank-notes, which will form the last branch of this preface, reference will be made to the Bill introduced by Mr. Gladstone in 1865 for the purpose of requiring Banks in England to hold Government Securities to the amount of their circulation in such a way as thereby to provide security for the payment of the notes. This, like other attempts at compulsory legislation on a matter so delicate, was not successful, but the object aimed at has received the approval of most Banking authorities, and the present Bill seems to afford the opportunity of so encouraging Banks to provide such securities as to lead to their gradual attainment without interfering with freedom of action on the part of the Banks. As indicated in my Notes, the co-existence of unlimited liability for bank-notes with limited liability for all other obligations is a blot upon the joint-stock system, and I suggested there the application of a remedy somewhat akin to the arrangements in the Issue Department of the Bank of England, by which the gold which the Scotch Banks have to hold against the notes issued in excess of their authorised circulation might form a special security for the payment of the notes, and thereby restrict at all events the unlimited liability of the shareholders. The difficulty of ear-marking coin, and the loss of interest involved in its retention, render such an arrangement inexpedient if not

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impracticable, and the same object might, I think, be more easily and more completely attained by holding Government or other approved securities to cover the liability under the notes issued by the Bank.

It is a well-known and not uncommon practice with limited investment or other companies desiring to borrow money secured on special assets of the company to constitute a trust for behoof of the debenture-holders and to vest in trustees, named by, but otherwise independent of, the company, securities or other assets of the company to an amount sufficient to meet its liabilities under the debentures so secured. In the event of the subsequent failure of the company, the assets so held in trust are not subject to the general liabilities of the company, but must be applied by the trustees in payment of the debentures.

The same system might easily be gradually adopted by our Banks, so as absolutely to secure the holders of their notes, and to relieve their shareholders of any liability beyond the amount of the uncalled capital or reserve liability, the amount of which is known. Assuming it to be approved of by our Scotch Banks, all of which hold continuously large investments in Government and other approved securities,[1] the following comparison of the amounts of the reserves and of the circulation (authorised and surplus) of the seven larger Scotch Banks seems to show that they need have little difficulty in gradually setting aside trust-investments to an amount sufficient to cover at least their surplus circulation :—

[1] Mr. Davidson stated before the Committee on Banks of Issue (Report, Query 1055) that 'the policy of the Bank of Scotland has been to hold from 'a million to a million and a quarter of consols.'

Appendix, p. 155.

NAME OF BANK.	Authorised Circulation.	Surplus Issue.	Reserve.
Bank of Scotland . .	£343,418	£260,287	£750,000
Royal Bank of Scotland	216,451	522,490	710,000
British Linen Bank .	438,024	114,339	411,740
Commercial Bank . .	374,880	464,879	416,544
National Bank . . .	297,024	362,962	500,000
Union Bank	454,346	336,726	315,000
Clydesdale Bank . .	274,321	372,120	500,000
Total Surplus Issues		£2,433,803	
Add Total Authorised Circulation . .		2,398,464	
Total Note Issues . .		£4,832,267	
Total Reserve Funds . .			£3,603,284

As an encouragement to the formation of such bank-note security trust-funds, a clause might be added to the Bill *empowering the Board of Trade, on being satisfied that any Bank of Issue has invested in Government or other approved securities trust-funds of an amount sufficient to meet its note issue on the average of three years preceding, and in such a way as to give the note-holders, if necessary, a preference over the trust-funds, to issue a license authorising such Bank, if previously authorised to use the letter R after its name, to add thereto the letter S for one year, the license being renewable annually by the Board of Trade on being satisfied that the trust-fund is kept adequate and duly invested, so as always to cover the note issue on the average of the three years immediately preceding.*

Under this system '*The Bank of Scotland, R. S.*,' would indicate that this Bank had (1) a reserve liability equal to the amount of its paid-up capital for the time,

and (2) that its notes were secured by approved trust-investments to the amount thereof.

It may be urged against such a system that it would unduly tie up the resources of the Bank; but any loss of interest thereby sustained would, I feel certain, be more than compensated by the increased confidence with which the letters R. S. would inspire depositors. It must be kept in view that such trust-investments would serve all the purposes of a reserve separately invested, which is so effective in giving solidity and steadiness to a Bank. To prove that funds so invested, even to a much larger amount, need not affect unduly the dividends of the shareholders, reference may be made to the evidence of Mr. Cooke, the Manager of the Manchester and Liverpool District Bank, who states that the capital of that Bank, amounting to £900,000, and its reserve fund to the amount of £500,000 more, are all invested in consols—£100,000, the balance of the reserve, being invested in Manchester Corporation Debentures; while, notwithstanding, the Bank had for nine years been paying a dividend of 20 per cent to its shareholders.

Report, Queries 6828 and 6829.

Even if our Scotch Banks were only able for a time to invest trust-funds to the amount of their *surplus* issues (which are one-third less than their present reserve funds), they would by doing so be in a position to defy the adverse criticisms of English bankers. The *gravamen* of their complaints lies in the alleged fact that, while the Scotch Banks have a right, denied to the English Banks, to issue notes (in excess of their authorised circulation) to an unlimited amount against gold, this surplus issue is virtually unsecured, the gold kept by the Banks not being more than sufficient for the exigencies of their large deposit business.

V.—Disabilities to be imposed on Scotch and Irish Banks.

Speech. But in the case of the Scotch and Irish banks there is a difference, and, especially in the case of the Scotch banks, difficulties arise from the system upon which the issues of Scotland are conducted, because there, over and above the amount of the authorised issue, you have what is roughly described as an issue of notes upon gold. There are some features of this system which are not wholly satisfactory. (Hear.) It is difficult to be quite sure that there really is gold held against all the notes issued. I admit this is a thorny subject to deal with, and I am rather unwilling to go into the controversy which we are naturally led to enter upon when we come to the question of Scotch issues. I propose, therefore, we should make this provision with regard to the right of banks to become limited or to take the position of reserved liability banks common to all banks of the United Kingdom, and that we should make the clause, which I propose as a substitute for the Overstone Clause, applicable also to all parts of the United Kingdom; but in order to keep within bounds the difficulties which arise under the Scotch system, I shall propose by that clause to make this condition—that a bank of issue shall not register itself as a reserved liability company, or, after the passing of this Bill, as a limited liability company, if and so long as it has any house of business or establishment as a bank in any part of the United Kingdom other than that in which the principal offices are situated. The effect of that would be to confine a bank of Scotland to Scotland, a bank of England to England, and one of Ireland to Ireland. Upon the whole, though that falls short of the mode of dealing with the whole question of issue as I should like to deal with it if I had the means, I think it provides a convenient temporary arrangement—at all events with regard to a difficult and important part of the question.

The disabilities above referred to are imposed by section 8 of the Bill.

The impolitic and irrational character of these proposed disabilities has been urged so strongly in all the public prints on this side of the Border, and has been so fully and generously admitted by the English press, that we may almost rely on the rumoured intention of the Government to abandon this clause of the Bill being carried out. We are well aware of the powerful influence that has been exerted in this direction by the English bankers, but the

Chancellor of the Exchequer has displayed in dealing with them on former occasions so much fairness, and so clear a perception of the true interests of the country, that he may be expected still, as he did on a former occasion, 'to decline 'to interfere with free development on the part of any por- 'tion of the banking community of this country, or with 'the privileges and rights which they enjoy under the law.' 1876, May 30; see p. 46.

It seems necessary, however, to notice the reference made in the Chancellor's speech to a supposed difficulty of being 'quite sure that there really is gold held against all 'the notes issued' by the Scotch banks. The insinuation which appears, though it was probably not intended, to be conveyed in these words, cannot be met more fairly than it was on 23d April last in the columns of the *Courant*, the Government organ in Edinburgh:—'If he infers this from 'the false returns which were made by the City of Glasgow 'Bank in the last few months of its infamous career, he 'must be thought much more ready to see a difficulty than 'to remedy it. Those false returns were not a necessary 'consequence of the law, but a result of its perfunctory 'administration. The Government has statutory power to 'send an inspector at any business hour into any Scotch 'bank and cause it to produce the gold held against its 'excess notes. The majority of bank managers would 'welcome him, and, in fact, it was often a subject of regret 'among themselves that the clause authorising inspection 'was not rigidly enforced.'

The question raised by the clause under consideration may, however, require to be discussed in Parliament—if not now, at least when the great question of bank issues, with which the Chancellor admits he is unable at present to grapple, comes to be debated. I have therefore endea-

voured, under the last head of this preface, to present a full and fair statement of the facts bearing on the question, and these, I think, should convince any candid reader that the proposed disabilities would be alike impolitic and unfair.

If, however, they are imposed by Parliament, I venture to predict that they will be found quite ineffectual for the end they have been devised to serve. Of the six Banks which have already established agencies in London, three —the Bank of Scotland and the Royal and British Linen Banks—maintain as corporations that the liability of their shareholders is limited to their stock, and that being so, they have no interest to avail themselves of the limitation of liability conferred by the Companies' Acts if they must thereby forfeit the right to continue their London business. The other three Banks which have branches in London—the National and Union Banks of Scotland and the Clydesdale Banking Company—would, I hope, gladly avail themselves of the privileges of the proposed Act if they were offered on fair terms. The English bankers may have relied on the poverty but not the wills of these Banks consenting to the hard terms offered. But they will find that the Scotch, although a poor, are a proud and also an ingenious people. It is true that the stocks of our seven larger Banks, which on 1st October last were worth £23,982,500 had fallen in price by 20th November last to £19,075,000; and that the same stocks were quoted on 9th April last at prices amounting to 16,787,500

Appendix, p. 154.

being, if they had then been realised, a loss of £7,195,000. It is also true that a large amount of Bank stock in Scotland is ready to be put into the market, and is only withheld from sale in the hope of limited liability being obtained under the Act of the Government. But we have two strings—I may say three—to our bow. If the desired limitation shall not be made available on fair terms, no fewer than three limited companies, one in Edinburgh and two in Glasgow, are ready to start into existence for the purpose of enabling trustees and other shareholders of our unlimited Banks, who desire or require to sell their Bank stocks, either to transfer them to these companies in exchange for their shares, or to sell them at the fair prices which such companies may be expected to give.

Under no circumstances will any Scotch Bank be induced by the clause under consideration to abandon its legal rights either to an establishment in London or to its note issue.

VI.—Publication of Accounts.

Speech. There is no satisfactory provision at present for the publication of accounts, and I propose that there should be a form given in the schedule of the Act which would regulate the accounts, which at all events should be presented by banks once in every year. (Cheers.) I am unwilling to make that account too complicated or to go into so much detail as the hon. member for Glasgow has done in the Bill he has put on the table. That is a Bill of a very interesting character, and the hon. member has spent a good deal of trouble in framing the account contained in the schedule to his Bill; but I think it more complicated than is desirable.

The provisions for the publication of Bank accounts in a form which it is presumed (although it is not expressly provided) are intended to be *at least* as full as in Form B appended to the Bill, are contained in its 10th section.

Upon this Form I have no remarks to offer, and I need only repeat my conviction that, while it may not be desirable to *compel* the publication of Bank accounts in such detail as that of the Form appended to Dr. Cameron's Bill, the result of a general limitation of the liability of Bank

shareholders will be to promote greater publicity in Bank accounts. We have the high authority of Mr. Palgrave for believing that, 'as a general principle, the more publicity 'a Bank gives its affairs, the greater the business it 'will do.'

Report, Query 5807.

VII.—Audit.

Speech. Then there is another matter of importance, and that is there is at present no proper provision for audit. With regard to both the publication of accounts and the audit, we desire to be distinctly understood as repudiating in any way Government interference. We do not desire to have the publication of accounts subject to the regulation of the Government or through the Government in any way; nor do we desire that the audit should be conducted in any way by a Government department or direction. All we propose is that in every bank there should be a provision made for the appointment of an auditor or auditors independent of the directors, who shall audit the accounts and publish the report they will be called upon to make; and in making the examination they will have to make, and drawing up the report they will have to present, what we call on the auditors to do is to certify whether the accounts give correctly and disclose truly the state of the company as shown by the books of the company. It is impossible for an auditor to go into the books and say whether this is a good bill or security. That is not only impossible to effect, but almost to attempt. We keep free from that. What we propose in the Bill is that a proper examination shall take place of the books, and that the auditor shall declare, assuming their correctness, if the statement of accounts properly put together does give a full and fair description of the state of the bank.

The audit of bank accounts will be regulated by section 11 of the Bill.

Concurring entirely in the principles which have guided the Government in framing this section, as above explained by the Chancellor, I would beg leave merely to suggest that the auditor should be vested with even more ample powers. His duty should be to apply such tests as will enable him to certify, with as near an approach to certainty as possible, the correctness of every item of the Bank's balance-sheet, and for that purpose he should be vested with almost unlimited powers of investigation and

inquiry. As an example of a function which has already been discharged by the first regular *auditors* appointed by any Scotch Bank, reference may be made to the certificate of Messrs. Haldane and M'Kinnon, dated 21st April last, and appended to the Abstract State of Affairs of the Union Bank of Scotland, which contains the following passage:—'We have examined the securities and docu-'ments representing the reserves of the Bank, and its 'investments entered under the heads of Consols, 'money at call, and short loans in London, amounting to '£1,860,490 : 17 : 5, and other securities and investments, 'amounting to £685,963 : 10 : 8, and are satisfied of the 'accuracy and value thereof. We also certify that we 'have examined the cash at the head offices in Glasgow 'and Edinburgh, amounting to £368,775 : 16 : 10, and 'found it correct.' It appears to me that the clause of the Bill as to audit is defective, in so far as it does not seem to *empower* the Auditor to make such an examination of the securities for Bank investments.

It is gratifying to think that at least one of our Scotch Banks had voluntarily undertaken, before the Government Bill was published, an audit even more complete than that which the Banks will have to submit to if the Bill becomes law, and the wisdom of its policy in so doing has been proved in the most convincing and agreeable way, by an immediate and considerable rise in the price of the stock of the Bank.

It is worthy also of remark that an audit of a less thorough but still important kind has been conducted by independent inspectors, whom it has been the practice of the shareholders of the Bank of Scotland to appoint for that purpose during the greater part of the last two centuries.

VIII.—Scotch Banks in England.

Referring to what has been already said regarding the proposed exclusion of the Scotch Banks from England, it seems desirable, whether the question should be raised now or in future, that its position should be explained in such a way as to admit of a fair judgment being formed by those unable to peruse the voluminous Report of the Select Committee on Banks of Issue. It requires some determination to attempt the perusal of a Blue Book of 559 pages, but the high opinion which this Report leads one to form of the ability and candour of our Bank managers and the care and skill displayed by the committee in their examination amply repays its perusal.

I am anxious now to give, as briefly and clearly as possible, an account of the circumstances out of which this international question has arisen. It is not my intention, however, to enter upon the field which our senior member, Mr. M'Laren, will occupy so well, by considering whether the proposed exclusion of our Scotch Banks from England is a violation of the fundamental principles of the union between the two countries.

The history of the question commences with the foundation of the Bank of England. As explained by Sir Henry Thring in his Memorandum, 'the legal history of 'Banking in England is, in effect, the history of the estab- 'lishment of the Bank of England, of the creation of its 'monopoly, and of the gradual withdrawal, by successive 'Acts of Parliament, of certain items, so to speak, of that 'monopoly, leaving a residuum of restrictions on issuing 'Banks still remaining unrepealed.'

Report, p. 432.

The Bank of England was established on 27th July

1694, by Royal Charter, granted in pursuance of sec. 19 5 and 6 Gul. et Mar. cap. 20, whereby power was given their Majesties to incorporate certain persons who had contributed a sum of £1,200,000 for the purpose of carrying on the war in France, and were entitled, in respect thereof, to be paid a yearly sum of £100,000.

At this time there was no legal restriction on the issue of bank-notes, which are really mere promises to pay to bearer on demand, and, in conformity with the practice of foreign Banks, the Bank of England, without any special authority under its Charter, began at once to issue promissory-notes in the form of the bank-notes at present used. Then, and for long afterwards, the issue of bank-notes was regarded as a primary and essential function of all Banks.

The Bank of Scotland was established in 1695, by an Act of the Scottish Parliament under the same sovereign, and it is a remarkable fact, as stated by Mr. Davidson, the late treasurer of that Bank, that, at that time, 'its Directors 'were one half in London and one half in Scotland; it had 'an establishment in London for eight or nine years, and 'then it was withdrawn.'

See pp. 79 and 147, *infra*.

See Query 1044 of Committee's Report.

In order to protect the Bank of England against the rivalry of other Banking establishments, there was passed in 1697 the first of the series of prohibitory enactments which have given rise to the present question, being as follows (8 and 9 Gul. III. cap. 20, sec. 28):—

> 'That during the continuance of the corporation of the 'Governor and Company of the Bank of England, no other 'Bank, or any other corporation, society, fellowship, company, 'or constitution in the nature of a Bank, shall be erected or 'established, permitted, suffered, countenanced, or allowed by 'Act of Parliament within this kingdom.'

Notwithstanding this prohibition, the Bank of Scotland, as already mentioned, had an establishment in London until about 1704, and it does not appear that its withdrawal from London was in consequence of the statutory provision above mentioned.

But, in the year last mentioned, a Charter of Incorporation having been granted to certain mining adventurers in England, that corporation proceeded to erect itself into a money bank, and to issue notes like the Bank of England. To prevent this competition the Act of 6 Anne, cap. 22, passed in 1707 and repeated in 1708 (7 Anne, c. 7, sec. 61), provided—

> 'That during the continuance of the said corporation of the 'Governor and Company of the Bank of England, it shall not 'be lawful for any body politic or corporate whatsoever, erected 'or to be erected (other than the said Governor and Company 'of the Bank of England), or for any other persons whatsoever, 'united or to be united in covenants or partnership, exceeding the 'number of six persons, in that part of Great Britain called 'England, to borrow, owe, or take up any sum or sums of money 'on their bills or notes payable at demand, or at any less time 'than six months from the borrowing thereof.'

The monopoly thus created was renewed in 1800, when the Directors of the Bank of England, alarmed at a proposal to found a rival bank, offered Mr. Pitt an advance of £3,000,000 for six years without interest, on his agreeing to renew the Bank monopoly for twenty-one years from 1812. Mr. Pitt having accepted this offer, the Act of 39 and 40 Geo. III. c. 28 was passed, and contained (sec. 15) a repetition of the previous prohibitions in the following terms:—

> 'And to prevent any doubts that may arise concerning the 'privilege or power given by former Acts of Parliament to the 'said Governor and Company of exclusive banking, and also in 'regard to the erecting any other bank or banks by Parliament, 'or restraining other persons from banking during the continu- 'ance of the said privilege granted to the Governor and Com- 'pany of the Bank of England as before cited, it is hereby fur- 'ther enacted and declared, that it is the true intent and mean- 'ing of this Act, that no other bank shall be erected, established, 'or allowed by Parliament; And that it shall not be lawful for 'any body politic or corporate whatsoever, erected or to be 'erected, or for any other persons, united or to be united in 'covenants or partnership, exceeding the number of six persons 'in that part of Great Britain called England, to borrow, owe, 'or take up any sum or sums of money on their bills or notes, 'payable on demand, or at any less time than six months from 'the borrowing thereof, during the continuance of the said pri- 'vilege to the said Governor and Company; who are hereby 'declared to be and remain a corporation, with the privilege of 'exclusive banking, as before recited; subject to redemption on 'the terms and conditions before mentioned.'

In 1826, in consequence of an extraordinary number of failures of private banks about that time, an Act was passed (7 Geo. IV. c. 46, sec. 1) which, after reciting that the 'Governor and Company of the Bank of England have 'consented to relinquish so much of their exclusive privi- 'lege,' contained the following provisions:—

> 'I. That from and after the passing of this Act, it shall and 'may be lawful for any bodies politic or corporate, erected for 'the purposes of banking, or for any number of persons, united 'in covenants or copartnership, although such persons so united 'or carrying on business together shall consist of more than six 'in number, to carry on the trade or business of bankers in 'England, in like manner as copartnerships of bankers consist- 'ing of not more than six persons in number may lawfully do;' and

'For such bodies politic or corporate, or such persons so 'united as aforesaid, to make and issue their bills or notes at 'any place or places in England exceeding the distance of sixty-'five miles from London, payable on demand, or otherwise, at 'some place or places specified upon such bills or notes, exceed-'ing the distance of sixty-five miles from London, and not else-'where, and to borrow, owe, or take up any sum or sums of 'money on their bills or notes so made, and issued at any such 'place or places as aforesaid:

'Provided always, that such corporations or persons carrying 'on such trade or business of bankers in copartnership shall 'not have any house of business or establishment as bankers in 'London, or at any place or places not exceeding the distance 'of sixty-five miles from London;

'And that every member of any such corporation or co-'partnership shall be liable to and responsible for the due pay-'ment of all bills and notes which shall be issued, and for all 'sums of money which shall be borrowed, owed, or taken up by 'the corporation or copartnership of which such person shall be 'a member.'

'II. Provided always, and be it further enacted, that nothing 'in this Act contained shall extend, or be construed to extend, 'to enable or authorise any such corporation or copartnership 'exceeding the number of six persons so carrying on the trade or 'business of bankers as aforesaid, either by any member of or 'person belonging to any such corporation or copartnership, or 'by any agent or agents, or any other person or persons on 'behalf of any such corporation or copartnership, to issue or 're-issue in London, or at any place or places not exceeding 'the distance of sixty-five miles from London, any bill or note 'of such corporation or copartnership which shall be payable to 'bearer on demand, or any bank post bill; nor to draw upon 'any partner or agent, or other person or persons who may be 'resident in London, or at any place or places not exceeding the 'distance of sixty-five miles from London, any bill of exchange

'which shall be payable on demand, or which shall be for a less amount than £50:

'Provided also that it shall be lawful, notwithstanding any-'thing herein, or in the said recited Act contained, for any such 'corporation or copartnership to draw any bill of exchange for 'any sum of money amounting to the sum of £50 or upwards, 'payable either in London or elsewhere, at any period after date 'or after sight.

'III. Provided also, and be it further enacted, that nothing 'in this Act contained shall extend or be construed to extend 'to enable or authorise any such corporation or copartnership 'exceeding the number of six persons, so carrying on the trade 'or business of bankers in England as aforesaid, or any member, 'agent or agents of any such corporation or copartnership, to 'borrow, owe, or take up in London or at any place or places 'not exceeding the distance of sixty-five miles from London, 'any sum or sums of money, on any bill or promissory-note of 'any such corporation or copartnership payable on demand, or 'at any less time than six months from the borrowing thereof, 'nor to make or issue any bill or bills of exchange or promissory 'note or notes of such corporation or copartnership, contrary to 'the provisions of the said recited Act of the 39th and 40th 'years of King George the Third, save as provided by this Act 'in that behalf:

'Provided also that nothing herein contained shall extend 'or be construed to extend to prevent any such corporation or 'copartnership, by any agent or person authorised by them, 'from discounting in London or elsewhere any bill or bills of 'exchange not drawn by or upon such corporation or copartner-'ship, or by or upon any person on their behalf.'

On the occasion of the renewal of the Bank of England's charter in 1833, and as the result of an agitation in London for the establishment of a deposit bank (which the law officers of the Crown considered would not infringe on the monopoly which they held had been granted to the

Bank of England in 1697 as a Bank of Issue and not as a Bank of Deposit), an Act was passed containing the following important provisions (3 and 4 Gul. IV. c. 98):—

'I. The said Governor and Company of the Bank of England shall have and enjoy such exclusive privilege of Banking as is given by this Act as a body corporate, for the period and upon the terms and conditions hereinafter mentioned, and subject to termination of such exclusive privilege at the time and in the manner in this Act specified.

'II. During the continuance of the said privilege, no body politic or corporate, and no society or company, or persons united or to be united in covenants or partnerships, exceeding six persons, shall make or issue in London, or within sixty-five miles thereof, any bill of exchange or promissory-note, or engagement for the payment of money on demand, or upon which any person holding the same may obtain payment on demand:

'Provided always, that nothing herein, or in the said recited Act of the seventh year of the reign of his late Majesty King George IV. contained, shall be construed to prevent any body politic or corporate, or any society or company, or incorporated company or corporation or copartnership, carrying on and transacting Banking business at any greater distance than sixty-five miles from London, and not having any house of business or establishment as Bankers in London, or within sixty-five miles thereof (except as hereinafter mentioned), to make and issue their bills and notes payable on demand or otherwise at the place at which the same shall be issued, being more than sixty-five miles from London, and also in London, and to have an agent or agents in London, or at any other place at which such bills or notes shall be made payable, for the purpose of payment only; but no such bill or note shall be for any sum less than £5, or be re-issued in London, or within sixty-five miles thereof.

'III. And whereas the intention of this Act is that the Governor and Company of the Bank of England should, during

'the period stated in this Act (subject nevertheless to such redemption as is described in this Act), continue to hold and enjoy all the exclusive privileges of Banking given by the said recited Act of the 39th and 40th years of the reign of his Majesty King George III. aforesaid, as regulated by the said recited Act of the seventh year of his late Majesty King George IV., or any prior or subsequent Act or Acts of Parliament, but no other or further exclusive privilege of Banking: And whereas doubts have arisen as to the construction of the said Acts, and as to the extent of such exclusive privilege, and it is expedient that all such doubts should be removed: Be it therefore declared and enacted, that any body politic or corporate, or society, or company, or partnership, although consisting of more than six persons, may carry on the trade or business of Banking in London, or within sixty-five miles thereof, provided that such body politic or corporate, or society, or company, or partnership, do not borrow, owe, or take up in England any sum or sums of money on their bills or notes, payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this Act to the said Governor and Company of the Bank of England.'[1]

The immediate result of this Act was the establishment in London of the London and Westminster Bank, a mere deposit bank, but the first Joint-Stock Bank which competed for such business in the metropolis with the Bank of England.

Sir Robert Peel, availing himself of the opportunity reserved by the last-mentioned Act of revising or cancelling the Bank Charter in 1845, introduced in 1844 the Bank Charter Act (7 and 8 Vic., c. 32), which provided—

1. That the issue of bank notes by the Bank of England

[1] The last paragraph of this clause is generally founded on as having removed any objection to the establishment in London of agencies of the Scotch Banks.

should be kept wholly distinct from the general Banking business, and that the notes issued by the Bank should be so issued on the credit of securities, coin and bullion set apart in the Issue Department.

2. That no new Bank of Issue should be established after the passing of the Act.

3. That existing Banks of Issue should thenceforth be entitled to issue only the average amount of notes which they had in circulation during the twelve weeks preceding the 27th April 1844.

4. The restriction as to copartnerships of six persons was rendered more stringent by providing that if any company or partnership consisting at that date of six, or less than six, persons, increased their number of partners beyond six, they were to lose their issue.

5. The Bank of England was allowed to compound with private banks of issue for a withdrawal of their own notes and an issue of Bank of England notes on payment of an annuity not exceeding one per cent on the amount of the issue so withdrawn; but it was provided that such compositions were to cease on the 1st August 1856, a period prolonged by 19 and 20 Vict. c. 20, until the general prohibition of country bank issues or the determination of the privileges of the Bank of England.

6. The privileges of the Bank were to continue till twelve months' notice, to be given after the 1st August 1855, and repayment of all debts due from the public.

The enactments before quoted, which from their verbosity and complication have given rise to so much discussion, have been given at length because no partial quotation or paraphrase could supply their place as a basis for argument.

As regards English bank notes, it only remains to be observed that, in 1826, by the Act of 7 Geo. IV. c. 6, the further issue in England of notes under £5 was forbidden; and by 9 Geo. IV. c. 65, the uttering in England after 5th

April 1829 of notes under £5 which had been made or issued in Scotland or Ireland was prohibited under a penalty of £20 for every such note issued or transferred. It is interesting to remember that it was in connection with a proposed similar prohibition of notes under £5 in Scotland and Ireland that Sir Walter Scott, in a series of letters under the *nom de plume* of Malachi Malagrowther, did so much to arouse the national opposition to which we owe the continued use of £1 notes in this country.

The issue of bank notes in Scotland—at least to the amount of £1 and upwards—was a common law right until 1844, when by the Act of 7 and 8 Vict. c. 32, sec. 10, it was provided that, from and after the passing of that Act, no person other than a banker, who on the 6th May 1844 was lawfully issuing his own bank-notes, should make or issue bank notes in any part of the United Kingdom. In 1845 this Act was followed by 8 and 9 Vict. c. 38, which provided that the Commissioners of Stamps and Taxes should ascertain, as respects each bank of issue in Scotland, the average amount of its circulation during the year preceding the 1st May 1845, and it was declared that such bank should thenceforth be prohibited from issuing its own notes beyond the certified average amount issued, and monthly average amount of gold and silver coin held at the head office or principal place of issue, by such Bank.

For terms of Scotch Bank Act, see pp. 98 to 102.

Comparing, then, the privileges of Scotch Banks with English, it appears that they can issue notes of a *minimum* value of £1, whilst the English Banks are restricted to a *minimum* value of £5, and that the Scotch Banks can issue notes against gold to any amount, whilst they are subjected, at all events in Scotland, to none of the restrictions to which country banks of issue are subjected in England.

It would further seem that Scotch Banks of issue may issue notes of £5 and upwards in England, as such notes do not fall within the prohibition of 9 Geo. IV. c. 65.

The history of our Scotch Banks, so far as it has any practical bearing on the present question, may be gathered from the following Notes, pages 79 to 88. It is sufficient here to observe that, with the exception of the eight or nine years during which the Bank of Scotland had an establishment in London contemporaneous with the earliest youth of the Bank of England, the only periods during which Scotch Banks, previous to the Parliamentary Enquiry of 1875, had carried on business in England are as follows :—

1. THE NATIONAL BANK OF SCOTLAND opened a branch office in London in 1864.

2. THE BANK OF SCOTLAND opened a branch in London in 1867. As explained by its treasurer, Mr. Davidson, the Directors were induced to do so partly by the increase of the reserves which they required to keep in London, and preferred to manage themselves rather than through agents, and partly by the growing tendency of late years on the part of Scotch commercial houses to open bank accounts in London. The Directors, feeling that the Bank had an undoubted right to be in London, saw no reason why it should not look forward to participating in London business.

Report, Query 1044.

3. THE CLYDESDALE BANK in 1874 opened three branches in Cumberland—at Carlisle, Workington, and Whitehaven. The inducements of this Bank to commence business in Cumberland, as explained by its manager, Mr. Readman, were that it had a very extensive connection in Glasgow and the west of Scotland with the iron trade and with large ironmasters, nearly all of whom have establishments in Cumberland, to whom it might be a convenience as well as an advantage to the Bank if it had branches in that district. In addition to this there was considerable intercourse between the opposite shores of the Solway Firth, and the Bank had several branches in Dumfriess-shire and Wigtownshire, while there was a very large Scotch population scattered along the shores of Cumberland.

Report, Query 3625.

4. THE ROYAL BANK OF SCOTLAND established a branch in London in 1874. It was the only Scotch Bank which was expressly precluded by its Constitution from carrying on business out of Scotland. What led the Royal Bank chiefly to desire to come to London, as explained by its manager Mr. Fleming, was this,—'That the establishment of the branches of two other Scotch Banks had introduced a new element into the competition among the Scotch Banks; that their establishment had pointed out to mercantile men in Scotland,—customers of all the Banks in Scotland,—the facilities which a London bank account gave to them. The practice of accepting mercantile bills, payable in London, has extended very greatly within the last twenty or thirty years, and a merchant in Glasgow carrying on a large foreign business can conduct his financial banking operations quite as well through a London banking account as he can through a Scotch Bank. The result of that was that a temptation was held out to our Scotch customers to open banking accounts in London. One great object, therefore, is to preserve our Scotch business, and by means of this London office, to give to our Scotch customers the facility which they would get elsewhere, and to maintain our connection with them.'

Report, Query 1690.

Mr. Fleming, finding it necessary or desirable to obtain

an Act of Parliament to enable the Royal Bank to extend its business beyond Scotland, explained the purpose of the Bank to apply therefor to the Governors of the Bank of England, and obtained from them an assurance that there was nothing in it that was objectionable to them.

Report, Query 195.

The Royal Bank Bill, as originally framed, craved leave to conduct business in England; but learning that the English country bankers objected to this, Mr. Fleming, in communication with Mr. Wade, their chairman, explained that it had never been in the contemplation of his Directors that the Bank should carry on business elsewhere than in London. 'It is no doubt true,' he added, 'that any Scotch Bank now entitled to carry on business 'in London is equally entitled to do so in the provinces;' but the Bank voluntarily limited the operation of the Bill to London, having no desire or intention of going to the provinces. There was no opposition to the Bill on the part of the London Bankers; and accordingly, by 36 and 37 Vict. c. 217 (sec. 2), it was enacted that

Report, Query 144.

Report, Query 145.

> 'It shall be lawful for the Royal Bank to establish a branch 'for the purpose of carrying on the business of banking in London, and to take hold and dispose of lands and houses, and 'other real property and estate, for the purpose of such branch; 'provided that nothing in this Act contained shall authorise the 'Royal Bank to issue its own bank-notes elsewhere than in 'Scotland.'

These incursions of Scotch Banks into England excited, however, the jealousy of English bankers, and their dissatisfaction was manifested in a Bill introduced into the House of Commons by Mr. Goschen in 1874. The effect of that Bill, as explained by Mr. Rae, one of its advocates, would have been 'to place all privileged Banks upon pre-

Report, Query 5066.

'cisely the same footing; it would limit the English Banks 'of Issue to banking in the provinces of England only; 'it would limit the Scotch Banks of Issue to banking in 'Scotland; and the Irish Banks of Issue to banking in 'Ireland; and so far as that goes, it would place them all 'on exactly the same footing.'

The discussion of Mr. Goschen's Bill resulted in the appointment, on 17th March 1875, of a Select Committee, 'to consider and report upon the restrictions imposed and 'privileges conferred by law on bankers authorised to 'make and issue notes in England, Scotland, and Ireland 'respectively.'

Mr. J. Fitzjames Stephen, Q.C., who was instructed to look into the law affecting English and Scotch Banks, on behalf of the English bankers who supported the Bill of Mr. Goschen, appeared professionally before the Select Committee, and gave evidence to the effect that the law on the subject might be summed up in the following propositions; which were propounded by him under two heads, viz.—

Report, Query 205.

I.—Indisputable.

1. The Bank of England may issue notes for not less than £5 throughout England, upon the conditions as to the amount of issue prescribed by the Bank Charter Act of 1844.

2. Private Banks in any part of England, and Joint-Stock Banks having the whole of their banking establishments, and carrying on their business as bankers at any place in England 65 miles from London, and not having any house of business or establishment as bankers in London, may issue notes for not less than £5, if they

lawfully issued notes on the 6th May 1844, subject to the restrictions imposed by the Bank Charter Act.

3. Every banker, entitled to issue notes, who becomes bankrupt, or ceases to carry on the business of a banker, or discontinues the issue of bank notes, and every Private Bank which, by increasing the number of its partners above six, becomes a Joint-Stock Bank, loses thereby the right to issue notes.

4. Both the Private Banks and the Joint-Stock Banks above mentioned may have agents in London for the payment of the notes which they issue, and may state upon such notes that they are payable in London, and may draw bills of exchange for whatever amount they please upon agents in London.

II.—Doubtful.

5. No Joint-Stock Bank which issues notes anywhere, except the Joint-Stock Banks specified in proposition 2 (that is, Joint-Stock Banks in England, and more than sixty-five miles from London), may carry on business in any part of England.

6. Any Joint-Stock Bank which does not issue notes anywhere may carry on all other branches of banking business, except the issue of notes, in any part of England.

No similar evidence on the opposite side was taken by the Committee, but there was put in by the Manager of the Clydesdale Bank a case submitted by that Bank in 1855 to Sir Roundell Palmer, now Lord Selborne, who gave a distinct opinion to the effect that the Clydesdale Bank, being empowered by its constitution to establish agencies not only in Scotland, but elsewhere in the United Kingdom, either with or without local boards of management,

could legally establish such agencies in London, and carry on their banking business in all its departments, except the issuing notes in England, and the drawing, accepting, and endorsing bills of exchange payable to bearer on demand. Sir Roundell Palmer also expressed the opinion that the circumstance of the Clydesdale Bank being a Bank of Issue in Scotland did not preclude it from carrying on the general business of banking in London, and elsewhere in England, subject, however, to the observation that the business to be so established ought to have strictly and properly the character of an agency, and not that of a primary or independent business. He likewise indicated the proceedings which, in the event of such branches being considered illegal, might be adopted by the Crown or the Bank of England for their suppression. A similar opinion was said to have been obtained at the same time from Lord Moncreiff, and on 30th April 1875, Joseph Brown, Esq., Report, Query 3623 Q.C., and John Westlake, Esq., Q.C., on considering the memorandum of Sir Henry Thring, who had indicated an opposite view, expressed themselves 'nevertheless of opinion 'that there neither is, nor ever has been, anything in the 'Statute-Book to prevent Scotch Banks of Issue from 'establishing themselves as Banks of Deposit either in 'London or in any other part of England.'

The Committee having taken a great deal of evidence, and obtained an opinion from any witness — whether legally qualified to form it or not—who chose to express one on either side, examined, as their last witness, Mr. Walter Bagehot, a director of Stuckey's Bank, who, though naturally inclined to regard unfavourably the claims of the Scotch Banks, suggested what humbly appears to me to be the only sensible mode of solving the

Report, Query 7965. legal difficulty, in these terms :—'I cannot say that I have 'read the whole of the evidence which has been given 'before this Committee, but I have read a great deal of 'it with great care; the result of it seems to me to be (if 'I may offer a suggestion), that the question should be 'tried at law; Mr. Fitzjames Stephen has given evidence 'that the position of the Scotch Banks in England is at 'present illegal, and, if I understand him correctly, Sir 'Henry Thring to some extent follows him. Supposing them 'to be right, the Bill brought in by Mr. Goschen, which 'is the primary subject, if I am rightly informed, referred 'to this Committee, would be unnecessary; I would there-'fore humbly suggest that this Committee might ask the 'Government to have the question tried in some way.'

The Committee, however, did not adopt this suggestion, but contented themselves with reporting, on 22d July 1875, that they 'have examined a considerable number of 'witnesses, and have agreed to report the Minutes of Evi-'dence to the House; but they have not had time to pre-'pare a Report thereon in the present Session; and they 'consequently recommend their reappointment next year.'

Nothing followed on this Report, and the Committee was not reappointed; but, on 30th May 1876, the Chancellor of the Exchequer was waited upon in Downing Street by an influential deputation of English Bankers, who urged the exclusion of Scotch Banks from England. To these gentlemen the Chancellor replied as follows:— 'We must assume, from the fact of their being able to 'carry on business here, that what they are doing is in 'conformity with law. Then we are asked to interfere 'with their doing that which by law they have a perfect 'right to do, and which they contend, and justly contend,

'that it is their interest to do; and we cannot help feeling 'that what is to the interest of the Banks is to the interest 'also of those who deal with them,—namely, the public.' This reply, amounting as clearly as it could be put in official language to a final refusal to comply with the proposal of the English bankers, was so construed by all concerned, and three other Scotch Banks—the British Linen, Clydesdale, and Union—have since, in reliance on the right thus acknowledged by the Government, established agencies in London.

But while, until now, the labours of this Select Committee have not resulted in legislative action on the part of the Government, and the universal disapproval, which has been expressed in both England and Scotland, of the present attempt to alter the *status quo* in the international question seems to leave little doubt of its being abandoned, it would be unfortunate if the labours of the Select Committee were to lead to no practical results. The evidence collected by them shows that the system of monopoly by which it had been attempted to bolster up the Bank of England has been most prejudicial to the true interests of England; and that, although Sir Robert Peel appears to have contemplated the gradual substitution of a single State issue (to occupy, as regards paper currency, the position of the mint with reference to the coinage of the realm), the result of his legislation in England has only, so far, been to create a muddle as regards the conflicting interests of the Bank of England, on the one hand, and the numerous Private and Joint-Stock Banks, whether with or without power of issue, on the other. This perhaps was unavoidable during the transition period from an imperfect monopoly of issue on the part of the Bank of England to an exclusive power of issue on the part of the State.

In the meantime the English Banks of Issue are placed in a position alike of perplexity for themselves and of paralysis as regards the benefit of the public. Each of the Banks of Issue has a hard-and-fast line to contend with. Within that line the issue is free—with the all-important exception that £5 is the *minimum* value of the note—and no guarantee, whether in the shape of gold or securities, is provided for the protection of the public, who, as regards the position of *Private* Banks of Issue, are kept absolutely in the dark. Beyond the line which limits their circulation the Banks are hemmed in by the severe penalty of a fine of an equivalent amount for every £5 note which they issue in excess of their authorised circulation; and such is the unfortunate effect of these arbitrary restrictions, that while, as a general rule, the Banks of Issue in the north of England are in constant dread of exceeding their circulation, those in the south are unable to exercise fully the privilege they possess, and in both cases the public are the real sufferers. If, again, a private banking firm desires to increase its capital by the admission of new partners, it must either, if that involves the increase of their number beyond the magic six, forfeit its privilege of issue; or, as in the case of Gurney's Bank at Great Yarmouth, resort to the expedient explained by Mr. Palgrave of having more than one head office, in each of which there are six partners, some of whom serve to give a peculiar unity to the confederation by the fact that they 'go through the whole.' Neither Private nor Joint-Stock Banks of Issue can transfer or amalgamate for their own advantage and that of the public without some sacrifice of their privileges of issue; and in the case of an English Provincial Joint-Stock Bank of Issue finding it for the advantage of its

Report, Queries 5790 to 5795.

customers to open a London office, it can do so only at the sacrifice of its whole privilege of issue.

Sir Robert Peel's legislation has not, except in contrast with its effect in England, produced such anomalies either in Scotland or in Ireland. In these countries, which as regards bank-notes could never compete with the Bank of England, the powers of issue possessed by the Banks were in 1844 practically unlimited, and although Sir Robert's dictum to them was 'Thus far shall ye go, and no 'further,' in issuing paper money without an equivalent in coin, he allowed the Banks which then possessed the right of issue an unlimited power of increasing it, provided only they held £1 in coin for every £1 note which was *issued* by the Bank,—the equipoise of paper and coin being tested in Scotland by monthly averages. The practical effect of this is that our Scotch Banks can print as many notes as suit them, irrespective of the amount of their authorised circulation or of the coin which they must hold for any excess of circulated paper, and they may fill their tills with such unlimited paper money, provided only the average amount of the notes actually issued and in the hands of the public during each month does not exceed the average amount, during the same period, of the coin held at the Head Office of the Bank, adding thereto the amount of the authorised circulation of the Bank.

The distinction made by Sir Robert Peel between England on the one hand, and the sister kingdoms of Scotland and Ireland on the other, apart from the peculiarities of the English Bank monopolies, had a cause sufficiently obvious. In England alone was there a State Bank able to provide a note issue practically unlimited and sufficiently secured. In England alone was the Bank

of England note a legal tender, and there only therefore could the other Banks, in the event of their own note issues proving insufficient for the requirements of the public, supply themselves with an excess of paper money.

The practical result of Sir Robert Peel's Bank legislation in Scotland has been, according to most of the English witnesses, to create a monopoly in the Banks, now reduced to ten in number, which alone enjoy the privilege of a note issue. The opportunity which this monopoly affords them of filling the tills of their numerous branches with paper money, which costs them nothing but the expense of its manufacture, is generally considered in England to exclude practically all chance of any English Bank competing successfully with Scotch Banks in Scotland, where an English Bank could only provide itself with a circulating medium acceptable to the people by purchasing the notes of the rival Scotch Banks, and so advertising them to its own prejudice. But the fact that, under a similar system in Ireland, non-issuing Banks have, since 1845, been started, and are enjoying a vigorous life, notwithstanding the competition of the older Banks which monopolise the note issue of the country, seems to show that the success of the privileged Scotch Banks in excluding all competition in Scotland may be otherwise accounted for. The additional reason assigned by adverse English bankers is that Scotland is 'over-banked'—that the possession of an inexpensive circulating medium has enabled the Scotch Banks to establish agencies and to supply other Banking facilities to an extent which the less favoured English Banks could not afford to do even in England, far less in Scotland. They point to the fact of no fewer than seven of the Scotch Banks having established themselves in a town so small as

Brechin as a practical demonstration of this assertion; and then the English bankers address to Government the appeal which has raised the present question in some such terms as these:—'If, owing to the exceptional privileges Report *passim.*
'which you have conferred on the Scotch Banks, we can-
'not compete with them in Scotland, defend us at least
'from the competition of these Scotch Banks, which you
'have virtually subsidised, by confining them to their own
'country. After having, by an extravagant number of
'agencies—exceeding 800—which the country does not
'require, and which no bank without the privilege of an
'unlimited note issue could afford to maintain—drained
'their own country of its deposits, the Scotch Banks are
'coming to London, and one of them has even established
'itself in Cumberland, to deprive us of our customers by
'offering them advances and various Banking facilities
'which they could only supply by draining their own
'country under the exceptional facilities of their Govern-
'ment monopoly or subsidy—call it what you will—and
'with which we English bankers, enjoying no such privi-
'leges, but sorely harassed in the possession of such as you
'have given us, are quite unable to compete.'

Mr. Rae (the chairman of the North and South Wales Bank, and deputy-chairman of the Issuers' Committee of the Association of English Country Bankers), when examined by the Chancellor of the Exchequer, brought out the position maintained by the English bankers through a humorous illustration, well fitted, he may have thought, to convey his meaning to a nation which monopolises the manufacture of 'the barley bree.' Being asked by the Report, Query 5103.
Chancellor if he had any objection to the competition of the new Joint-Stock Banks which have been established in

England since the Act of 1844, with capital nearly equal to all the Scotch Banks put together, Mr. Rae replied, Report, Query 5104. ‘ None whatever.’ ‘ Then why,’ the Chancellor asked, ‘ have you an objection to the competition of the Scotch ‘ Banks ? ’ and Mr. Rae replied, ‘ Our objection is this, that ‘ they start with an advantage which is given them by ‘ their privileges of issue over and above the advantages ‘ given to the English Banks of Issue, but especially over ‘ those Banks in England which have no right of issue.’ Report, Query 5105. *Chancellor*—‘ But those rights of issue they have only in ‘ Scotland ? ’ *Mr. Rae*—‘ Those rights of issue they have ‘ only in Scotland, but they enable them to become the ‘ possessors or the borrowers of capital to a very consider- ‘ able amount, for which they pay a very low rate of ‘ interest compared with what the English Banks have ‘ to pay for theirs. I think I might explain my ‘ meaning in this way : I believe that the duty upon ‘ the distillation of whisky is the same in England as it ‘ is in Scotland, but if the Legislature were to reduce the ‘ duty payable upon the spirit in Scotland as compared ‘ with what it is in England, that would surely enable ‘ the Scotch distillers to come into England and fight the ‘ English distillers at a disadvantage ; that appears to me ‘ to be precisely the objection that the English Banks have ‘ to the Scotch Banks coming to compete with them in ‘ England ; they can make or raise banking resources on ‘ much easier terms, in consequence of certain favours ‘ given to them by the Legislature, more than are given to ‘ the English Banks.’ In further explanation of his illus- Report, Query 5115. tration, Mr. Rae was asked by Mr. Sampson Lloyd, ‘ You ‘ would not object to a Scotch distiller coming and manu- ‘ facturing whisky in England subject to the English duty,

‘ even on the supposition which the Chancellor of the ‘ Exchequer put to you that the duty in Scotland were to ‘ be half that which is levied in England, so long as the ‘ whisky was made as well as sold in England, and subject ‘ to the English duty ’ ? to which Mr. Rae replied in the negative, and he gave the same answer to Mr. Lloyd’s next query, ‘ But supposing that this Scotch distiller on the Report, Query 5152. ‘ other side of the Border had an underground pipe from ‘ his Scotch distillery, so that he could get the Scotch ‘ made whisky into his English distillery, and there sell it ‘ as English whisky, you would not approve of that ? ’ Mr. Lloyd and Mr. Rae concurred in thinking this ‘ a fair Report, Query 5153. ‘ analogy with the case of a Scotch Bank raising its capital ‘ in Scotland, which is as easily conveyed to England to ‘ compete with the English Banks, as in the case of the ‘ whisky brought by an underground pipe.’

It seems impossible for an unprejudiced mind not to admit that English Bankers, regarding their Scotch brethren in England from this point of view, have a grievance to complain of, and the reality of the grievance is established when one considers the sacrifice which the National Provincial Bank of England had to make in order to establish an office in London. That Bank in 1875 had a capital of about £1,400,000, and a reserve of £900,000, and its branches extended over forty out of the fifty-two counties of England and Wales. Having been established as a Bank of Issue before 1844—of course in the provinces—the Bank retained its circulation, which, as authorised, amounted to £442,371. As explained by Mr. Wade, a director of the Bank, ‘ It was nearly always out, and with Report, Query 2157. ‘ the value that we attached to the notes in our till as a ‘ reserve, we ourselves always looked upon it as equal to

'£1,000,000.' It was certainly worth, he says, 'a deposit, 'without interest, of £600,000 or £700,000.' This Bank, considering it of great importance to have an establishment in London, had to face the alternative of either continuing to do without it, or to give up its valuable privilege of issue, and after due consideration they resolved to surrender their issue. For some reason, not very intelligible to me, the Bank did not even obtain the compensation which, under the Bank Charter Act, they should have received from the Bank of England, being 1 per cent on the amount of their authorised circulation, *i.e.* an annuity of £4423. Mr. Kirkman Hodgson, M.P., who gave evidence as representing the directors of the Bank of England, explains that 'They' (the National Provincial Bank) 'were just too late; but they have very 'great reason to be thankful for the day they gave up 'their issue.' Mr. Wade also admitted that having their establishment in London was 'a very great advantage' to his Bank, but he applied the moral of his experience to the Scotch Banks in a way which produced an amusing passage of arms between him and the member for Glasgow.

Report, Query 7837.

Report, Query 2198.

Mr. Wade—'We had nothing offered to us when we 'gave up our own issue. There was no alternative; it 'was either giving it up or not opening the business in 'London.' *Mr. Anderson*—'You gave it up for the purpose of coming to London?' *Mr. Wade*—'We gave it 'up for the purpose of coming to London.' *Mr. Anderson*—'And you think that the Scotch Banks ought to give up 'their issues if they come to London also?' *Mr. Wade*—'We think so; we think that if they come to England at 'all, they ought to give them up.' *Mr. Anderson*—'You 'have heard the story of the fox that had lost his tail, I

Report, Queries 1815 to 1818.

'suppose?' *Mr. Wade*—'We do not look at it quite in 'that light.'

In further illustration of the hardship of the alternative to which this Bank was thus subjected, and as indicating a mode by which such hardships may yet possibly be removed without prejudice to vested interests, but to the advantage of the banking public, and to the profit of our somewhat empty National Exchequer, I may refer, when dismissing this subject, to a proposal which, when the National Provincial Bank of England was upon the horns of its dilemma, it made to Mr. Gladstone. This is explained in the evidence of Mr. Wade, who states that his Bank offered to hold Government securities against their issue, to place them in the hands of the Government, and to pay a small tax of £1 : 5s. for the right of issue—that in 1865 Mr. Gladstone introduced a Bill into Parliament with these provisions, but that, owing to the opposition of certain sections of the Banking interest, the Government was unable to carry it. Mr. Wade explains further, 'that 'there was a general feeling that it might be the begin- 'ning of large changes as regards the laws affecting bank- 'ing, and that bankers, being a conservative class, very 'much preferred that things should remain as they are.' English Bankers, while thus conservative of their own interests, would appear to be somewhat radical as regards those of their Scotch and Irish brethren.

Report, Queries 2207 to 2217.

Report, Query 2215.

In closing these somewhat hurried observations, I wish only further to record, as the result of at least a dispassionate consideration of the question which has again been raised by the Government Banking Bill, the following convictions:—

1. That the weight of legal authority is in favour of

its being entirely consistent with existing laws that the Scotch Banks should, if so disposed (a disposition which must necessarily be very limited for the present) establish *Deposit* agencies in London, or anywhere else in England.

2. That if Government be not satisfied of this, their first step should be to order a trial of the question, assuming them to have any interest to raise it.

3. That to attempt, either directly or indirectly, to legislate, while Scotch Bank agencies exist in England, in such a manner as to subject the Banks to the alternative of surrendering either their English offices or their issues, would be nothing short of confiscation.

4. That the true remedy for the grievances of the English Bankers is not to subject their Scotch brethren to new disabilities, but to remove those which undoubtedly affect English Banks, and that by such means as, with due security to the public, may promote their best interests as well as those of the Banks themselves.

What means should be devised for this important end is a question which may well engage the attention of the Legislature. Even with the assistance of the valuable evidence already submitted to the House of Commons by its Select Committee, the problem is one which cannot be solved except by a very deliberate exercise of the wisdom of Parliament. I append, as to my mind well worthy of its consideration, a note of alternative suggestions made by Mr. John Dun, the able manager of Parr's Banking Company (Limited), and by Mr. Bagehot.

When referring to Mr. Dun's evidence, I may be permitted, perhaps, in concluding this too bulky preface, respectfully to recommend to the consideration of all our Scotch Banks the observations made by Mr. Dun—himself

at one time an Inspector of Branches in the Bank of Scotland—regarding the economy which, without loss of business, might result from a reduction in the number of Scotch Bank agencies. *Mr. Campbell-Bannerman*— Report, Queries 6422 to 6424.
'Would not the withdrawal of all the small branches of 'one of the great Scotch Banks be a loss to the Scotch 'public?' *Mr. Dun*—No; because there are too many 'of them, as I conceive, already.' *Mr. Campbell-Bannerman*—'Do you think there is too great a competition?' *Mr. Dun*—'Yes; I think the Scotch Banks throw away 'about 2½ per cent of the profits upon their capital by the 'excessive number of their branches.' *Mr. Campbell-Bannerman.*—'But the power of establishing those branches 'is of advantage to the public, is it not?' *Mr. Dun*—'It has been a decided advantage to the public; but of 'late years, I conceive, with all deference to the judgment 'of the Scotch Banks, that it has been carried too far; and 'I think we had it in evidence from Mr. Readman that he 'considered that there were far too many Bank offices in 'Glasgow.' If, under friendly and fair arrangements between the Scotch Banks themselves, any superfluous branch could, when the agency becomes vacant, be grafted on that of another Bank in the same locality, the joint business would probably be as important as before, and more remunerative to the Banks concerned, while the public, in whose interest mainly this suggestion is submitted, might also be gainers. The fact of Scotland being drained of its deposits, and of its being admitted by some of the Banks that they require to find in London an outlet for their superfluous capital, has prompted of late the common enough enquiry whether the Banks fairly supply from their provincial deposits sufficient accommodation to develop the

trade and enterprise of the districts which yield them. This enquiry is sometimes met by the remark that many of the country Bank agents are not of such standing and judgment as to warrant their being vested by the Bank with the discretion to make local advances. The consequence is that provincial savings are swept into large centres of population 'from whose bourne,' as we have lately seen, it sometimes happens that no such travellers return. If, by judicious amalgamation of Bank agencies, a better paid and more trustworthy class of agents could be appointed, it might tend more to the prosperity both of the country and the Banks, and in this sense, but that alone, we might be reconciled to the Chancellor's principle of keeping Scotch Banks to Scotland.

SUGGESTIONS FOR LEGISLATION.

I.—John Dun, Esq.

Report, Query 6430.

Mr. Dun, in a letter addressed by him to the Chancellor of the Exchequer, which was quoted with approbation in the Committee Room, says that four courses for dealing with the difficulty suggest themselves :—'*First*, that the 'Scotch and Irish Banks, if they wish to retain their special 'privileges in Scotland and Ireland, should confine their 'operations to their own countries respectively ; *secondly*, 'that if Scotch or Irish Banks insist on coming to England 'to compete with English Banks, English Banks should be 'empowered to go to Scotland or Ireland to compete there 'with the Scotch or Irish Banks on equal terms, and with 'equal privileges as regards circulation ; *thirdly*, that to the 'English Banks should be conceded powers of circulation 'in England, as ample relatively as those enjoyed by the

'Scotch and Irish Banks in Scotland and Ireland. '*Fourthly*, that all private issues in England, Scotland, 'and Ireland should be abolished, and that the State, or 'the Bank of England, should be the sole source of issue.'

II.—Walter Bagehot, Esq.

Report, Query 7994.

Interrogated by the Chancellor of the Exchequer—'Supposing that the State were to say : We will require all 'bankers issuing notes to deposit securities for the amount 'of notes which they issue, and we will allow all bankers, 'who choose to comply with that condition, to issue as 'much as they please, provided that they deposit ample 'securities, and we will take off all restrictions as to their 'coming to London, or as to the amalgamation of Banks 'or any other restrictions ; what ground of complaint do 'you think any banker could have ?' *Mr. Bagehot*—'I 'do not think that there would be any ground of complaint 'on the part of any banker ; I see no ground upon which 'any banker could complain.'

Edinburgh, 8*th May* 1879.

APPENDIX TO PREFACE.

A BILL to AMEND the LAW with respect to the LIABILITY of MEMBERS of BANKING and other JOINT-STOCK COMPANIES, and for other purposes.

BE it enacted by the Queen's most Excellent Majesty, by and with the consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Preliminary.

1. This Act may be cited as the Companies' Act, 1879. **Short title.**

2. This Act shall not apply to the Bank of England. **Act not to apply Bank of England.**

3. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies' Acts, 1862, 1867, and 1877, and those Acts, together with this Act, may be referred to as the Companies' Acts, 1862 to 1879. **Construction of Act 25 and 26 Vic., c. 89—30 and 31 Vic., c. 131—40 and 41 Vic., c. 26.**

Reserve Liability Companies.

4. Subject as in this Act mentioned, a joint-stock company may be formed, and an unlimited joint-stock company, whether already registered or not, may (with such assent of its members as is required in the case of an unlimited company registering as a limited company) register as a reserve liability company under the Companies' Acts, 1862 to 1879. **Establishment of Reserve Liability Company.**

5. The characteristics of a reserve liability company shall be as follows ; that is to say, **Nature of Reserve Liability Company.**

(1.) The words "reserve liability," or "limited by reserve," shall form part of the name of every reserve liability company.

(2.) In the event of a reserve liability company being wound up, there shall be payable in respect of each share in the company (in addition to such portion, if any, of the nominal amount of such share as is not paid up) the amount of the reserve liability attaching to such share; and the amount of such reserve liability shall be payable by the same persons and in the same manner as if such amount were part of the nominal amount of such share.

(3.) The amount of the reserve liability attaching to each share shall be regulated by the amount of such share, and shall be a sum equal to, or some multiple of, the nominal amount of the share in respect of which it is payable.

(4.) The amount of the reserve liability attaching to each share shall, in the case of a reserve liability company formed in pursuance of this Act, be stated in the memorandum of association, and in the case of an unlimited company registering as a reserve liability company in pursuance of this Act, be stated in the resolution passed by the members when assenting to registration.

(5.) The limit of liability acquired by an unlimited company registering as a reserve liability company shall not apply to any debts or liabilities of the company contracted prior to such registration; and such debts and liabilities may be enforced in the same manner in which the debts and liabilities of a company registered as an unlimited company are enforceable.

Subject as in this Act mentioned, all the provisions of the Companies' Acts, 1862, 1867, and 1877, shall, with the necessary modifications, apply to the formation of a company as a reserve liability company, and to such company when formed in the same manner as they apply to the formation of a limited company and to such company when formed; and all the provisions of the last-mentioned Acts shall, with the necessary modifications, apply to the registration of an unlimited company as a reserve liability company, and to the company when registered in the same manner as they apply to the registration of an unlimited company as a limited company and to the company when registered.

Registration Anew as a Limited Company.

Registration anew of unlimited company as a limited company.

6. Subject as in this Act mentioned, any company registered as an unlimited company may register under the Companies' Acts, 1862 to 1879, as a limited company.

The limit of liability acquired by an unlimited company registering as a limited company in pursuance of this Act shall not apply to any debts or liabilities of the company contracted prior to such registration, and such debts and liabilities may be enforced in the same manner in which the debts and liabilities of a company registered as an unlimited company are enforceable.

Special Provisions as to Banks.

Before registration of unlimited banking company as reserve liability or limited company notice to be published.

7. Section one hundred and eighty-eight of the Companies' Act, 1862,[1] is hereby repealed, and in place thereof it is enacted as follows:—Where, after the passing of this Act, any unlimited banking company registers under the Companies' Act, 1862 to 1879, as a reserve liability company, or as a limited company, it shall, at least *thirty days* previous to the date of registration, give notice of its intention to register as a reserve liability company or as a limited company, as follows; that is to say,

(1.) By publishing an advertisement in the *Gazette;* and

(2.) By publishing an advertisement once at least in each of the four successive weeks immediately preceding the date of registration in a local newspaper circulating in the county, city, town, or place in which the head office of the bank is situate; and where any branch is situate in some other county, city, town, or place than that in which the head office of the bank is situate, then also in a local newspaper circulating in such last-mentioned county, city, town, or place;

[1] See Appendix VII., p. 165.

The Gazette for the purposes of this section means—

As respects companies whose head office is situate in England, the *London Gazette.*

As respects companies whose head office is situate in Scotland, the *Edinburgh Gazette.*

As respects companies whose head office is situate in Ireland, the *Dublin Gazette.*

The registrar shall not register an unlimited banking company as a reserve liability company or as a limited company until he is satisfied that the conditions of this section with respect to the publication of notices have been complied with; but when he has registered the company, such registration shall be conclusive evidence that the conditions of this section have been complied with.

Restriction as to banks of issue in general.

8. A bank of issue shall not register as a reserve liability company or after the passing of this Act as a limited company if and so long as it has any house of business or establishment as a bank in any part of the United Kingdom other than that in which the head office or principal place of issue is situate.

If a bank of issue, at any time after it has registered as a reserve liability company, or after the passing of this Act as a limited company, opens or keeps open any house of business or establishment as a bank in any part of the United Kingdom other than that in which the head office or principal place of issue is situate, such house of business or establishment shall be deemed to be illegal, and may be prohibited by injunction, interdict, or other order of any competent court; and in addition thereto every director of the company opening or keeping open such house of business or establishment shall, on summary conviction, be liable to a penalty of *five pounds* a-day for every day during which the same is kept open. Nevertheless the limit of the liability of the members of the company shall not be affected, and such company shall continue to be a reserve liability company or a limited company, as the case may be.

Unlimited liability of bank of issue in respect of notes.

9. Section one hundred and eighty-two of the Companies' Act, 1862,[1] is hereby repealed, and in place thereof it is enacted

[1] See Appendix VII., p. 163.

as follows:—A bank of issue registered as a reserve liability company, or registered as a limited company, either before or after the passing of this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the noteholders and the general creditors, then the members, after satisfying the remaining demands of the noteholders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the noteholders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the noteholder, including, in the case of a reserve liability company, the amount of the reserve liability.

Accounts of banking companies.

10. The forty-fourth section of the Companies' Act, 1862,[1] shall not apply to a banking company registered as a reserve liability company, or registered after the passing of this Act as a limited company, and in place thereof the following section shall be enacted so far as relates to such companies; that is to say,

(1.) The directors of every banking company registered as a reserve liability company, or registered after the passing of this Act as a limited company, shall cause full and true accounts of the capital revenue and expenditure of the company to be kept.

(2.) Once at the least in every year the directors shall lay before the company in general meeting a balance-sheet, made up to a date not more than *thirty days* before such meeting, and exhibiting a true statement of the property of the company of every description, and of the liabilities of the company up to such date, together with a distinct view of the profit or loss which has arisen on the transactions of the company since the date of the last preceding balance-sheet. Provided that if a banking company has branch banks beyond the limits of Europe,

[1] See Appendix VII., p. 159.

the date to which the balance-sheet is to be made up may, as regards the business of any such branch, be any date not more than three months before such meeting.

(3.) Every such balance-sheet shall be signed by the secretary or manager, and by the directors of the company or three of them at the least; and a printed copy thereof shall, at least *seven days* before such meeting, be forwarded to every member of the company.

(4.) A copy of such balance-sheet shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(5.) If any company to which this section applies makes default in compliance with the provisions thereof, the company shall be liable on summary conviction to a penalty not exceeding *five pounds* for every day during which such default continues, and every director and manager of the company who knowingly and wilfully authorises or permits such default shall on summary conviction incur the like penalty.

Audit of accounts of banking companies.

11. (1.) Once at the least in every year the accounts of every banking company registered as a reserve liability company, or after the passing of this Act as a limited company, shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company, or any person interested otherwise than as a member in any transaction of the company, shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times

have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance-sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance-sheet referred to in the report is a full and fair balance-sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company.

Application of Companies' Acts.

Application of Companies' Acts, 1862, 1867, and 1877.

12. The following modifications shall be made in the application of the Companies' Acts, 1862, 1867, and 1877, for the purposes of this Act; (that is to say,)

(1.) As to a reserve liability company formed in pursuance of this Act—

(*a.*) In the memorandum of association the requirements of this Act, with respect to the name of the company, shall be complied with, but the word "limited" shall not be added as the last word in the name of the company, and the declaration as to the liability of the members shall be to the effect that such liability is limited by reserve, with the addition of the amount of such reserve liability.

(*b.*) The certificate of incorporation shall state that the company is incorporated as a reserve liability company.

(2.) As to an unlimited company registered as a reserve liability company, in pursuance of this Act—

(*a.*) Where the shares in the company have not been numbered prior to registration, the company shall, and they

are hereby authorised to, distinguish each share by its appropriate number.

(*b.*) The requirements of this Act with respect to the name of the company shall be complied with, but the word "limited" shall not be added as the last word in the name of the company.

(*c.*) A copy of the resolution declaring the amount of the reserve liability shall be delivered to the registrar with the other documents required.

(*d.*) The certificate of incorporation shall state that the company is incorporated as a reserve liability company.

(*e.*) The resolution declaring the amount of the reserve liability shall be deemed to be a condition of the company in the same manner as if it were contained in a registered memorandum of association.

(3) As to reserve liability companies whether formed or registered as such in pursuance of this Act—

(*a*) Where any new shares are issued by a reserve liability company the same amount of reserve liability shall attach to those shares in proportion to their nominal amount as attaches to the existing shares of the company.

(*b*) A reserve liability company shall not be authorised to reduce its capital, or to convert its shares into stock, or to consolidate or subdivide its shares.

(*c*) A reserve liability company shall not be authorised to issue share warrants under the Companies' Act, 1867.

(4) As to registration anew—

On the registration, in pursuance of this Act, as a reserve liability company or as a limited company of a company which has been already registered as an unlimited company, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies' Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was registered and regulated as an unlimited company had been contained in different Acts of Parliament, from those under which the company is registered as a reserve liability company, or as a limited company.

Forms and Definitions.

Application of Forms in Schedule.

13. The forms set forth in the schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer, but such forms may be altered or added to by the same authority and in the same manner, by and in which the forms contained in the Second Schedule to the Companies' Act, 1862, may be altered or added to.

Any alterations of, or additions to, forms made in pursuance of this section, shall be laid before Parliament within *three weeks* after they are made, if Parliament be then sitting, and if Parliament be not then sitting, within *three weeks* after the beginning of the then next session of Parliament.

14. In this Act—

Definitions.

The expression "joint-stock company" means a company consisting of seven or more members having a permanent paid-up or nominal capital of fixed amount, divided into shares also of fixed amount, and formed on the principle of having for its members the holders of shares in such capital, and no other persons.

The expression "bank of issue" means any joint-stock banking company lawfully issuing its own notes.

The expression "unlimited company" means a company the liability of whose members is unlimited.

The expression "limited company" means a company limited by shares.

The expression "part of the United Kingdom" means, according to circumstances, England, Scotland, or Ireland.

SCHEDULE.—FORM A.

MEMORANDUM OF ASSOCIATION OF A RESERVE LIABILITY COMPANY FORMED UNDER THE COMPANIES' ACTS, 1862 TO 1879.

1. The name of the company is the *East Anglian* Reserve Liability *Banking Company* [*or* the *East Anglian Banking Company* Limited by reserve.]

2. The registered office of the company will be situated *in England.*

3. The objects for which the company is established are *the carrying on the business of banking, and the doing all things incidental to carrying on such business.*

4. The liability of the members is limited by reserve, and the amount of reserve liability attaching to each share is a sum equal to (before the "nominal amount" twice, thrice, or any other multiple may be inserted) the nominal amount of each share.

5. The capital of the company *is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.*

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
1. John Jones, of , in the county of , merchant	200
2. John Smith, of , in the county of , "	25
3. Thomas Green, of , in the county of , "	30
4. John Thompson, of , in the county of , "	40
5. Caleb White, of , in the county of , "	15
6. Andrew Brown, of , in the county of , "	5
7. Cæsar White, of , in the county of , "	10
Total Shares taken	325

Dated the 22d day of November 1880.

Witness to the above Signatures—

JOHN HUNT,
13 Hute Street, Clerkenwell, Middlesex.

FORM B.

BALANCE-SHEET of the COMPANY , made up to the day of 18 .

Dr. Cr.

LIABILITIES.		PROPERTY.	
A.—LIABILITIES TO THE PUBLIC.			
1. Notes in circulation (*a*) .		1. Gold and silver coin and notes of the Bank of England	
2. Deposits and current accounts		2. Notes of other banks .	
3. Drafts payable within 21 days		3. Money at call at banks and brokers . . .	
4. Acceptances not having more than 90 days to run		4. Securities of or guaranteed by the Imperial Government . . .	
5. Liabilities by indorsement		5. Colonial and foreign Government securities . .	
6. Other liabilities (if any), describing their nature in general terms . . .		6. Railway stocks and other securities . . .	
B.—LIABILITIES TO PROPRIETORS.		7. Bills receivable—	
1. Capital divided into Shares of £ each, on each of which £ is paid, making a total paid-up capital of		(*a*) Six months . .	
2. Reserve fund . . .		(*b*) Under six months .	
3. Profit and Loss . . .		8. Loans and advances . .	
		9. Securities held as against acceptances . . .	
		10. Overdrafts or acceptances	
		11. Bank premises . .	
		12. Other property (if any), describing its nature in general terms . .	

(*a*) This item applies only to banks of issue.

OUR SCOTCH BANKS:

THEIR POSITION AND THEIR POLICY.

I.—Introduction.

We have scarcely realised the disaster that has befallen us. In the Metropolis, where, perhaps, the City of Glasgow Bank had as many shareholders, in proportion to the population, as in the Western Capital with which its name is identified, it seems as if one were going about after a great shipwreck—one meets so many friends and acquaintances with faces sorrow-stricken by the ruin that has fallen so suddenly on them and theirs. The desolation which threatens so many homes has scarcely, however, cast more than its baleful shadow over them. The realities to come are almost too painful to imagine, far less to describe.

If, in these circumstances, I venture to address a few words of counsel and consolation to the shareholders of our other Banks, I hope—provided I merely succeed in diverting public attention for a little from the calamity towards the moral which it teaches—that I may be spared any long apology for what may seem to the more direct sufferers almost an intrusion. But indeed we have all suffered more or less. If our commercial men prided themselves on anything it was on our Scotch Banking system, and now it is in danger of being for ever identified in the

minds of the unreflecting with the failure of the City of Glasgow Bank. 'Then you and I, and all of us, fell 'down,' and it seems time now to inquire into the causes of the disaster. It is said that 'pride comes before a 'fall,' and in the case of the City of Glasgow Bank pride seems to have taken the shape of exuberant confidence. The Bank had to shut its doors in the commercial crisis of 1857; but, without anything like a public or official inquiry, they were again opened; and through ever-extending branches, numbering latterly more than those of any other Bank in Scotland, the savings of a frugal people flowed into the coffers of the Glasgow office. There the demands of the wild speculators who presided over the Bank at last outgrew the plentiful supply to such an extent that, on the 1st of October 1878, its doors were shut, fortunately for the last time. Three weeks of laborious investigation revealed a state of affairs which surpassed the most gloomy forebodings. Upwards of six millions had been squandered—a sum which it is difficult to imagine, but which represents, if it were to be levied like a poll-tax, an imposition of about £2 a head on every man, woman, and child in Scotland.

Before entering upon the practical plea which this disaster appears to me to suggest, I wish to explain how it is that for some weeks my thoughts have been dwelling so much on this subject as to have suggested what I am now to submit as good for the present distress. I am not personally concerned in the City of Glasgow Bank, nor with the banking interest, but the financial crisis of 1857 and its lessons were painfully impressed upon my memory by the failure of the Western Bank, which swept away, towards the close of my father's days, most of the savings

of a busy professional life. The Judgment of the House of Lords which established the personal liability of Trustees, who, as such, were shareholders in the Western Bank, made a vivid impression on my mind; and ever since, when consulted by clients as to investing in Bank Stock, I have been accustomed to dissuade them from doing so on the ground that, by becoming shareholders in Banks, they were engaging in the most risky of all trades, with really no control over its management. It is with a feeling of thankfulness that I am able now to reflect on the fact that, so lately as last March, Trustees who had just entered upon the management of the funds of five little children, all invested in Bank Stocks, and (including one share of the City of Glasgow Bank) of the then value of about £3000, acted on my advice by selling the whole at once and investing the proceeds upon heritable security. If such advice has not been always given by most Scotch solicitors, it arises I believe from a delicacy on their part in suggesting changes of investment, in which they may be supposed by their clients to be actuated by motives of a selfish kind.

But while I am not personally involved in this last catastrophe of banking, I have—as who has not?—clients, connections, friends, and acquaintances, whom it threatens with ruin. Some of these clients hold stocks of other Banks, which must be realised to meet the calls on their City Bank shares, while others, as Trustees, less directly affected, hold largely in various Banks. The former find their stocks unsaleable; while the latter, although realising keenly now the risks which Trustees run, are content rather to endure them than to sacrifice the interests of the beneficiaries by selling the Bank Stocks in what must long continue a greatly depressed market.

My own experience as one of two Trustees who had to hold Bank Stock on behalf of a young Italian lady during her minority, suggested an idea which seemed to provide at least a temporary means of relief for shareholders compelled to realise. So soon as the young lady in question attained majority, I explained to her the risks which she and her Trustees would run by continuing to hold the Bank Stock, and I offered either to transfer the Stock to herself or to sell out if she would prefer to invest its value otherwise. She adopted the latter alternative, and the Stock was purchased by and transferred to an Investment Company (Limited), which accepted the Stock by impressing the transfer with the seal of the Company, and adding the signatures of one or two of its Directors, in the way prescribed by the Articles of Association for the corporate transaction by the Company of such business.

It was this experience, accordingly, that suggested to me the idea, that, in order to provide a purchaser for the Bank Stocks which must soon be forced on the market, a Limited Company might be formed for investment in Bank Stocks. This idea took shape in a draft prospectus of 'The Scottish Banking Investment Company (Limited),' which set forth that 'The serious responsibility involved 'in partnership in the Scotch Joint-Stock Banks has 'created anxiety amongst shareholders, and from various 'motives many are now desirous to realise their stocks. 'But the dread of unlimited liability affects buyers as 'well as sellers, and at present there cannot be said to be 'a market for Bank Shares, although it is believed that 'a few speculators have purchased shares at a very low 'figure.

'Convinced of the soundness of the Scotch Banks, the

'promoters of this Company are satisfied that no better 'investment than shares of these Banks is to be found, if 'the liability of the shareholders can be reduced to a 'reasonable limit. In present circumstances this can only 'be done by the formation of a Company, with liability 'limited by shares, and it is hoped that by means of the 'present Company holders of stock in the Scotch Banks, 'who wish or require to realise, may find a fair market, 'while investors who take shares of this Company will 'reap the advantages which, as a general rule, have been 'obtained by the holders of Bank Stocks in this country, 'without incurring undue responsibility.'

After consulting a friend whose authority in such matters stands deservedly high, I submitted the scheme to most of the Bank managers, by whom, generally, it was regarded with favour. I then took the opportunity of mentioning it to several gentlemen unconnected with Banks, but although most of them also expressed approval of such a Company, we concurred in thinking that the time had scarcely come for launching it, so as to secure its financial success. No such Company—as I fear the Rev. F. L. Robertson will find—can expect success unless it is based on the most selfish principles of political economy. The impression, accordingly, of most of the sound financiers who considered the scheme in this practical light was, that although the stability of the Banks, in the shares of which it was proposed to deal, is not doubted by practical men, it may be a question whether the price of Bank Stocks hitherto has not been somewhat out of proportion to the liabilities to which their holders are exposed. The realisation of their attendant liabilities, now so painfully forced upon the public mind, not only cannot but ought not to fail

to reduce the price which they have hitherto commanded as an investment, so long as these liabilities remain unlimited. The practical result of this and other considerations was that we resolved to wait a little.

This result, I confess, was not distasteful to me. The more I thought of the situation the more I was inclined to dwell on projects for the relief not merely of Bank Shareholders compelled to realise but of Bank Shareholders generally. It is in consequence of these accidental circumstances suggesting this train of thought that I now find myself in the act of trying to indite these Notes on our SCOTCH BANKS, THEIR POSITION AND THEIR POLICY.

I do not pretend to bring to the consideration of what is generally regarded as an abstruse subject any special aptitude for its treatment. The policy which commends itself to my mind is submitted merely as the view naturally occurring to any man of business who applies common sense to his experience. It will be my duty to suggest legal remedies for the evils of a Banking system which have twice subjected the same generation to such grievous calamities; but I hope that in doing so I will not forget that Bank Shareholders form, on the whole, a popular class of readers. It will be my endeavour, therefore, to avoid technicalities, and to make myself intelligible to the lay mind, both male and female; but I hope at the same time, by means of an Appendix, containing extracts from Statutes, etc., and statistics of a precise kind, to furnish information which even a man of business may find practically useful.

II.—THE POSITION OF THE SCOTCH BANKS.

There are now only ten Scotch Joint-Stock Banks,[1] and such remarks as I have to make upon them will be in the order of their seniority.

1. *The Bank of Scotland* was erected by an Act of the Scottish Parliament under William III., dated 17th July 1695. This Act is so interesting that a few extracts from it are given in the Appendix.[2] It is curious to observe that it started with a capital of £1,200,000, but being Scots money, that was equal to only £100,000 sterling, of which only 10 per cent was paid up. The Act declared the persons subscribing 'to be one body corporate and politic, 'by the name of the Governor and Company of the Bank 'of Scotland, under which name they shall have perpetual 'succession, and shall have a common seal,' etc. 'The 'said adventurers' are empowered to call up the remaining 90 per cent of capital: 'And it is hereby further '*statute*, that no dividend shall be made save out of the 'interest or product arising out of the joint stock,'—a most important principle. The Corporation obtained by the Act the monopoly of Scottish Banking for twenty-one years; and it is interesting to notice the penalties anxiously imposed by the Act against lending money to the Sovereign without the authority of Parliament, and among the other privileges conferred by the Act for the encouragement of the young Bank, a declaration 'That all foreigners who 'shall join as partners of this Bank shall thereby be and 'become naturalised Scotsmen, to all intents and pur-

[1] This of course is exclusive of the North British Bank, a small Discount House in Glasgow.

[2] Appendix No. I., Part 1, page 147.

' poses whatsoever.' This privilege has been held only to apply to the original partners.

The powers of the Bank of Scotland have been extended by a succession of six Acts of Parliament, the last of which, passed in 1873, authorises it to increase its capital to £4,500,000.

The subscribed capital now amounts to	£1,875,000
Of which there has been paid up . .	1,250,000
Leaving uncalled . . .	£625,000

Being half the amount already paid.

2. *The Royal Bank of Scotland* was incorporated by Royal Charter dated 31st May 1727. The Charter proceeds upon the narrative of 'An Act for settling certain yearly 'Funds payable out of the Revenues of Scotland to satisfy 'Public Debts in Scotland, and other uses mentioned in 'the Treaty of Union, and to discharge the Equivalents 'claimed on behalf of Scotland in terms of the said Treaty, 'and for obviating all future disputes, charges, and ex-'penses concerning these Equivalents.' The creditors of the public in Scotland, whose debts amounted to £248,550:0:9½ had been compounded with for an annuity of £10,000, payable out of the Scotch customs and excise; and under the authority of this Act the King had erected the Proprietors of this debt into a Corporation, by the name of *The Equivalent Company.* The Bank Charter goes on to recite a Petition of the Equivalent Company for obtaining a power of banking, etc., in Scotland to such of their Members as should subscribe all or part of their Stock into the Books of Subscription to be opened at Edinburgh. The Stock so subscribed is declared to be under the management of the Company thereby established; the subscribers to be called

by the name of the *Royal Bank of Scotland*, and by that name to have perpetual succession and a common seal, etc.; the Royal Bank to have a power of banking within Scotland.

The Charter contains a clause authorising calls on the shareholders of the Bank not exceeding £50 upon every £100 of subscribed capital, and so as not above £10 upon every £100 of subscribed capital should be called at one time. This clause will be found in the Appendix.[1] The Stock of the Bank, which was a sort of hive from the Equivalent Company, consisted at first of £111,000 of the Stock of the latter Company, which was fully paid up, being, in fact, very like our modern Consols or Consolidated Annuities. The Bank shareholders were liable in calls to the amount of £50 in addition to every £100 of their paid-up Stock, which calls the Bank was authorised to repay in whole or in part, and each of the seven Royal Charters subsequently obtained by the Bank ratifies and confirms all the privileges, authorities, and rights granted to the Bank by its original Charter. The last Charter, dated 30th December 1829, authorised the increase of the capital of the Bank to £2,000,000, provided the augmentation of half a million thereby authorised were paid up within five years.

This sum having been fully paid up, the capital of the Royal Bank is . £2,000,000

The original power of making calls not exceeding £50 upon every £100 of subscribed capital seems never to have been expressly renewed or cancelled.

3. *The British Linen Company Bank*, or rather The Company, was incorporated by a Royal Charter dated 5th July 1746, for the purpose of encouraging the linen manu-

[1] Appendix No. I., Part 2, page 149.

facture in Scotland. Having developed into a Banking Company, it obtained banking privileges by subsequent Charters, under the last of which, dated 19th March 1849, its capital, which has long been fully paid up, is now £1,000,000, and there still remains unexhausted the privilege to create £500,000 more stock conceded by the last Charter. The clauses of the original Charter referring to capital and calls will be found in the Appendix.[1]

This Bank has therefore a fully paid-up capital of	£1,000,000

4. *The Commercial Bank of Scotland* was established in 1810, and incorporated in 1831 by Royal Charter. In marked contrast to the Act of Parliament and Charters under which the three older Banks were respectively incorporated—which, beyond authorising calls to the amount above mentioned, make no reference to the liabilities of the Shareholders—the Charter of the Commercial Bank contains the following clause: 'But declaring hereby that 'nothing contained in these presents shall be construed 'as intended to limit the responsibility and liability of the 'individual partners of the said Corporation for the debts 'and engagements lawfully contracted and to be con-'tracted by the said Corporation; which responsibility and 'liability is to remain as valid and effectual as if these 'presents had not been granted, any law or practice to 'the contrary notwithstanding.'

The subscribed capital of the Commercial Bank is . . .	£3,000,000
Of which there has been paid .	1,000,000
Leaving uncalled . .	£2,000,000

[1] Appendix No. I., Part 3, page 150.

5. *The National Bank of Scotland* was instituted on 21st March 1825, and incorporated by Royal Charter, which contains a clause in similar terms to that of the Commercial Bank Charter above quoted.

Its subscribed capital amounts to .	£5,000,000
Of which there has been paid .	1,000,000
Leaving uncalled . .	£4,000,000

6. *The Aberdeen Town and County Banking Company*, instituted 1825, has a subscribed capital of £720,000

In 36,000 shares of £20 each, of which £7 is paid . . .	252,000
And there is uncalled . . .	£468,000

7. *The Union Bank of Scotland*, instituted 1830, has a fully paid-up capital of . . £1,000,000

8. *The North of Scotland Banking Company*, instituted 1836, has a subscribed capital of . £1,972,500

In 98,625 shares of £20 each, of which £4 is paid . . .	394,500
Leaving uncalled . . .	£1,578,000

9. *The Clydesdale Banking Company*, instituted 1838, has a fully paid-up capital of . . £1,000,000

10. *The Caledonian Banking Company*, instituted 1838, has a subscribed capital of . . £600,000

In 60,000 shares of £10 each, of which £2 : 10s. is paid . . .	150,000
Leaving uncalled . . .	£450,000

The last five Banks are understood to have been formed by contracts of copartnership, to which all the Shareholders are parties, and which, as amended from time to time, form the constitution of the several Banks. The whole of these five Banks are registered under 'The Companies' Act, '1862,'[1] becoming thereby 'Incorporated by or under Act 'of Parliament.'

As regards the liability of the shareholders, the contracts of these Banks are understood to provide that, in proportion to the Stock or Shares held by the partners respectively, they shall have right to the profits, and be liable for the losses, of the Bank; and they are respectively bound to relieve each other of all the debts and engagements of the Bank in the proportion of their respective shares of the capital stock.

The same liabilities attach to the shareholders of the Commercial and National Banks, under their respective Charters, and at common law.

The liability of the shareholders of the last seven Banks in the above list is therefore unlimited, their position with respect to the debts of their respective Banks being the same as that of the shareholders of the City of Glasgow Bank with respect to its debts.

As regards the first three Banks, viz. the Bank of Scotland and Royal and British Linen Company Banks, although the liability of their shareholders is not expressly limited by their respective Act and Charters, it is generally understood that the liability of their shareholders does not extend beyond the stock of the several Banks held by them respectively. It can scarcely, however, be supposed that the shareholders in these Banks are not liable for such calls, if any, as the Banks are expressly authorised to

[1] Sec. 191. Appendix, page 165.

make.[1] As regards any further liability it is very unlikely that there will ever be occasion to raise the question; and the law on the subject may be assumed to be that laid down in Bell's *Commentaries* (*Maclaren's edition*), ii. p. 546, as follows, viz.—

'A Royal Charter is necessary to enable a Company to 'hold lands, make bye-laws, and enjoy the other privileges 'of a Corporation; but a Charter to a trading or manu-'facturing Company is procured for the purpose chiefly of 'limiting the risk of the partners. It has sometimes been 'doubted whether this privilege can be granted by Royal 'Charter; but the King by his Charter may create frater-'nities or companies for trade, and the limited responsi-'bility is not a privilege inconsistent with the common 'law or with the rights of His Majesty's other subjects. 'It is a natural consequence of the creation of a separate 'legal person, and is nothing more than the sanction of a 'contract by which the Company and the public deal on 'the credit of the stock and property of the Corporation.'

Accordingly, M. Wolowski, in his Treatise on *Les Banques d'Ecosse*, refers to the liability of the shareholders as follows: 'With the exception of the Bank of Scotland, 'the Royal Bank of Scotland, and the British Linen 'Company, which, having Charters of Incorporation, are 'placed under a system analogous to our *Sociétés Ano-'nymes*, the other Scotch Banks are subject to the severe 'rule of joint and general liability, and the unlimited 'responsibility of the shareholders.' Mr. M'Culloch in his *Commercial Dictionary*, and Dr. R. Chambers in his *Book of Scotland*, express the same opinion.

[1] The Crown, however, was not empowered to impose by charter *personal* liability on the members of any Corporation for its debts until 1825, when 'The Bubble Act' of 1720 was repealed by the Act 6 Geo. IV. c. 91.

Mr. Somers, however, in his work on *The Scotch Banks and System of Issue*,[1] which contains a translation of M. Wolowski's Treatise, remarks on the statement above quoted as follows: 'The Bank of Scotland was constituted 'by Act of Parliament, which, since unlimited liability 'was the sole principle recognised by the mercantile law 'of the country, in joint-stock as well as private partner- 'ships until of very recent years, would appear *prima facie* 'to be the only form of authority competent to give to 'any company the privilege of limited liability. But the 'Act of Parliament incorporating the Bank of Scotland 'does not give this privilege to its stockholders. There is 'literally no mention of such a concession in the Act. The 'Royal Bank and the British Linen Company Bank were 'founded subsequently by Royal Charters, in which also 'there is no mention of limited liability; and while Par- 'liament, including the Crown with other Estates of the 'Realm, had undoubtedly the power of giving the excep- 'tional privilege of limited liability in special cases, it is 'not so undoubted that the royal authority alone could 'traverse the common mercantile law of the kingdom in 'any such way. Neither the Act of Parliament founding 'the Bank of Scotland, nor the Royal Charters founding 'the Royal and British Linen Banks, bear any literal trace 'that such an exception to the general law of the kingdom 'was in either case designed or intended. The Commercial 'Bank and the National Bank, both of still later origin, 'were incorporated by Royal Charters, in which the dis- 'tinction occurs that limited liability is expressly excluded; 'and so, in the case of neither of these two Banks, can any 'doubt or dispute as to the unlimited liability of share-

[1] By Robert Somers. A. and C. Black, 1873, p. 24.

'holders arise.' The doubt thus expressed cannot be regarded as of any legal value, and is quoted merely as indicating the uncertainty prevalent in the public mind regarding the liability of the shareholders in our three oldest Banks.

It is sometimes contended that the view of Professor Bell received confirmation by the Legislature in 1845, when Sir Robert Peel, after debates in Parliament, in which the peculiar position occupied by the three oldest Scotch Banks was fully recognised, carried his 'Act to regulate 'the issue of Bank Notes in Scotland.'[1] This Act will have to be considered more fully afterwards; but, as regards the liability of the Shareholders of these Banks, it is only necessary here to quote the provision of Section 13, whereby 'Every Banker in Scotland who is now carrying 'on or shall hereafter carry on business as such, *other than* '*the Bank of Scotland, the Royal Bank of Scotland, and* '*the British Linen Company*, shall, on the first day of 'January in each year, or within fifteen days thereafter, 'make a return to the Commissioners of Stamps and 'Taxes, at their head office in London, of his name, resi- 'dence, and occupation; or, in the case of a company or 'partnership, of the name, residence, and occupation of 'every person composing or being a member of such com- 'pany or partnership, and also the name of the firm under 'which such banker, company, or partnership carry on the 'business of banking, and of every place where such busi- 'ness is carried on,' under the penalties specified in the Act; and 'The said Commissioners of Stamps and Taxes 'shall, on or before the first day of March in every year, 'publish in some newspaper circulating within each town

[1] 8 and 9 Vict. c. 38.

'or county respectively in which the head office or prin-
'cipal place of issue of any such banker be situated, a copy
'of the return so made by every banker, company, or
'partnership carrying on the business of bankers within
'such town or county respectively, as the case may be.'

This statutory provision, from the operation of which the three oldest Scotch Banks are thus excepted, is sometimes founded on as implying that, in the view of the Legislature, the public were not entitled to rely on the personal liability of the shareholders of these Banks, whose names they are not required to disclose, but merely on the capital or stock of the several Banks.

It does not appear to me that much more can be said on the question of the liability of shareholders, but I append some notes on the Common Law of Scotland affecting Joint-Stock Companies which may be found interesting.[1] It is satisfactory to find that the *genius* of our Common Law had long ago evolved a system of limited liability, the result, probably, of our French Alliance. Although it broke down, the country is the better able now to accommodate itself to the modern system of limited liability, which, with its checks and safeguards, we owe mainly to Mr. Lowe.

The shareholders of the Bank of Scotland and Royal and British Linen Banks are perhaps safe to consider the limitation of their liability to the capital paid and calls exigible under their respective Act and Charters as scarcely open to question, while the shareholders of the other Banks need have no doubt that each of them is liable to the last farthing he possesses for the whole debts of the Bank in which he holds a share. But the liability of the share-

[1] Appendix No. II., page 152.

holders in all the Scotch Banks can only emerge when their assets are insufficient to meet their liabilities; and but for the failures which have taken place at an interval of more than twenty years, it could scarcely be considered a practical question.

In order that the present actual position of the Banks may be seen at a glance, I have compiled a Table, printed in the Appendix,[1] which gives the chief items of information to be derived from their latest Balance-Sheets and Returns.

Nothing, it appears to me, could be more satisfactory than these statistics, were it not for those of the City of Glasgow Bank. These I have thought it right to include at the end of the Table, for the purpose not only of comparison with those of the other Banks, but of showing the sad contrast between the Balance-Sheet of the Bank as at 5th June last, issued by the Directors, and that showing its actual position at 1st October last, prepared by the able Accountants and Solicitors who, after the Bank had closed its doors, were instructed by the Directors to prepare a Balance-Sheet as at the latter date, to be submitted to the shareholders.

However firm may be the belief of men of business in the reliability of the Returns of the other ten Banks, which, according to their last Balance-Sheets, show intact an aggregate of

Capital, paid up . .	£9,046,500
Reserve Funds . . .	3,797,725
Net profits (including Interim Dividends paid) . .	1,288,244
Amounting in all to .	£14,132,469

[1] Appendix No. IV., page 155.

it cannot be matter of surprise that the outside public have had their faith in Banks seriously shaken by the exposure of the utter falsity of similar Returns made by the City of Glasgow Bank. Its Directors reported that on 5th June last the Bank possessed intact—

Capital paid up . .	£1,000,000	0	0
Reserve Fund . . .	450,000	0	0
Net profits . . .	142,095	12	10
Together	£1,592,095	12	10
And within little more than three months it appeared as the result of an investigation by independent parties that—deducting the half-year's dividend at 12 per cent, paid in the meantime, say . .	60,000	0	0
there had been lost not only the balance, including the Bank's whole capital and reserve, of . .	£1,532,095	12	10
but, in addition, a sum of . .	5,190,983	11	3
showing no less than . .	£6,723,079	4	1

which the unfortunate shareholders had lost, while, till that terrible 2d of October last, they believed themselves the fortunate owners of shares in such a good concern.

Persuaded as I am that the appalling facts disclosed by the investigation of the affairs of the City of Glasgow Bank are entirely exceptional, and that all the other Banks would emerge triumphantly from a similar investigation, I still consider it my duty to express what I believe is a general feeling, namely, that the Balance-Sheets of all the Banks,—which are framed very closely upon the same

general model,—have hitherto been shrouded in unnecessary mystery.

Take, for example, the following Balance-Sheet, being the last issued by the Directors of the City of Glasgow Bank, and try, if you can, to see how any shareholder, or even the most skilled accountant, could have discerned under such pleasant figures the facts which the Balance-Sheet served to conceal:—

ABSTRACT BALANCE-SHEET, as at 5th JUNE 1878, as issued by the CITY OF GLASGOW BANK, and submitted to ANNUAL MEETING, 3d JULY 1878 :—

LIABILITIES.				ASSETS.			
I. Deposits at the Head Office and Branches, and Balances at the Credit of Banking Correspondents	£8,102,001	0	4	I. Bills of Exchange, Local and Country Bills, Credit Accounts, and other Advances upon Security	£8,484,466	9	2
II. Bank Notes in Circulation in Scotland and the Isle of Man	710,252	0	0	II. Advances on Heritable Property, and Value of Bank Buildings and Furniture at Head Office and Branches	265,324	9	0
III. Drafts outstanding, due, or with a currency not exceeding twenty-one days, and Drafts accepted by the Bank and its London Agents on account of Home and Foreign Constituents	1,488,244	18	6	III. Cash on hand—viz., Gold and Silver Coin and Notes of other Banks at Head Office and Branches £845,963 1 0			
Liabilities to the Public	£10,300,497	18	10	Government Stocks, Exchequer Bills, Railway and other Stocks and Debentures, and Balances in hands of Banking Correspondents	2,296,839	12	6
IV. Capital Account £1,000,000 0 0					3,142,802	13	6
V. Reserve Fund 450,000 0 0					£11,892,593	11	8
VI. Profit and Loss 142,095 12 10							
Liabilities to Partners	1,592,095	12	10				
	£11,892,593	11	8				

Under this specious Balance-Sheet lay concealed the following facts—none of them involving necessarily fraud or misrepresentation on the part of the Directors—namely, that in the first item of the assets, 'Bills of Exchange, 'Local and Country Bills, Credit Accounts, and other 'advances upon security . . £8,484,466 9 2 were included balances which have since been reported as due by four debtors, viz.—

I.	. .	£2,320,591	18	9
II.	. .	1,864,627	2	4
III.	. .	1,142,987	18	4
IV.	. .	464,186	19	5
Amounting in all to	. .	£5,792,393	18	10
Leaving only	. . .	£2,692,072	10	4

as the liabilities of all the other customers of this great Bank.

Nor is there a word in the Balance-Sheet to show that the Directors of the Bank, who occupied the position of Trustees for its shareholders, had advanced out of *their* funds to themselves and their business connections and friends the large sums for which it is rumoured some of them are now indebted to the Bank.

Nor is there in the Balance-Sheet, under the head of 'Government Stocks, Exchequer Bills, Railway, and other 'Stocks and Debentures, and Balances in hands of Bank-'ing Correspondents, £2,296,839 : 12 : 6,' the least indication of the fact that this Bank, established for the sole purpose of giving banking facilities to legitimate Scottish Traders on satisfactory security, held, absolutely, bonds of the Western Union Railway of America, and

the property of the Racine Warehouse and Dock Company, and shares of the Milwaukee and St. Paul Railway, the Marbella Iron Ore Company, the Glasgow Jute Company, the Grand Trunk Railway of Canada, the Erie Railway, and the Upper Assam Tea Company, to the value, even as reduced by the Investigators, of £396,068 : 10s. Of Government Stocks (British), being the first on the list, the Bank held only £2000 Consols.[1]

Nor does it appear from the Balance-Sheet that the Bank held in their own name, or those of the unfortunate persons who were persuaded to lend their names for the purpose, large quantities of its own Stock; or that the Bank was the most extensive dealer in its own shares.

The gross abuses of banking which have come to light in the case of the City of Glasgow Bank are, however, new in nothing except in their enormity. Excluding the circumstances which show that fraudulent conduct had characterised the Bank management in various departments for many years, the causes of its downfall find a parallel in those which brought ruin upon the Western Bank in 1857. The Balance-Sheet of the latter Bank, as at 27th May of that year, was as specious as that of the City of Glasgow Bank at 5th June last. But, as Mr. Somers[2] explains, it was becoming known that 'the Bank had 'accounts with four or five private firms, sustained from 'year to year in a wondrous magnitude of business by 'the resources mainly of the Bank, though having little 'or no share either in its capital or directorship, and that 'the accumulating losses on these few accounts, through a 'lax and inconceivably blind, partial, and shrinking administration, were threatening to absorb the whole paid-'up capital and profit reserve of this solid and appa-'rently prosperous company.' It turned out after the failure, although the Bank's Balance-Sheets had given no hint of such a transaction, 'that the Western Bank had 'established in New York an agency under James Lee 'and Company, to give the Bank's acceptance to bills 'of exchange and collateral securities, and had thus, in 'order to benefit by the higher rates of discount in the 'American city, wandered a long way out of its proper 'sphere.'[1] The results of the failure of the Western Bank, as described by the same pen, were to make 'some super-'fluously rich men in the copartnery less rich than they 'were before, and some moderately rich men comparatively poor; it drove one or two into utter distraction of 'mind; probably more into a premature grave; and it 'plunged a larger number into a degree of ruin for the 'moment which they could have little hope in their after-'life to retrieve.'[2]

[1] Accountants' and Solicitors' Report, p. 3, G.
[2] Somers' Scotch Banks, etc., p. 124.

But the lesson apparently was not sufficiently severe. Although in the following year an Act[3] was passed 'to 'enable Joint-Stock Banking Companies to be formed on 'the principle of Limited Liability,' no Bank in Scotland availed itself of its provisions, and Bank shareholders —even those of the City of Glasgow Bank, which, during the crisis, had been obliged to close its doors—were content to remain subject to the unlimited liabilities which had brought so many of their countrymen to ruin, without requiring any more explanatory Balance-Sheet or any independent audit. The same stereotyped form of Bal-

[1] Somers, p. 125. [2] Do., p. 147.
[3] 1858, August 2, 21 and 22 Vict., cap. 91.

ance-Sheet has continued to the present day to be the only information furnished by any Scotch Bank to its shareholders, and no Auditor has ever been appointed by the shareholders to verify the mystifying array of figures to which they have continued year after year to trust so blindly.

But while the principle of Limited Liability has never been adopted by any of the Scotch Banks, with its attendant checks and safeguards, there has been no objection on the part of the Banks to recognise Limited Companies as holders of their shares. Such Companies, of various kinds, have from time to time purchased Bank shares, and have accepted them in their corporate capacity. The case cited below[1] established the rights of Limited Companies to hold shares in other Companies if authorised to do so by their Memorandum and Articles of Association, and it is equally clear that no individual member of a Limited Company holding such shares is personally liable to the Bank, which has no recourse except upon the assets and capital of the Limited Company. Provision is made in the constitution of some at least of the Scotch Banks for enabling Companies or Corporations to vote at Bank meetings.

One other circumstance—disclosed by the late investigation into the affairs of the City of Glasgow Bank—seems alone to require attention in considering the position of the Scotch Banks.

Correcting a slight mistake into which the Reporters have fallen regarding the requirements of the 'Issue of 'Bank Notes' Act, their Report on the matter referred to is as follows:—

[1] *Barned's Banking Company*, ex parte *The Contract Corporation*, 3 Chancery, 105.

'The amount of gold and silver in the hands of the
'Cashier at the Head Office on the 1st inst., as entered in 1878, Oct. 1.
'the Cashier's Ledger, which appears to have been cor-
'rectly kept, was . . . £231,500 0 0
'To this falls to be added the amount
'in the hands of the Tellers at that
'date ascertained from their Cash-
'Books and Jotting-Books . 12,156 6 0

'making in all . . . £243,656 6 0

'As the authorised circulation of
'the Bank was only . . . £72,921 0 0
'the addition of this . . 243,656 6 0

'would only have justified an issue of £316,577 0 0
'But the circulation of the previous
'Saturday, as vouched by the Cir-
'culation Ledger, was . . 604,196 0 0[1]

'The explanation of the discrepancy is to be found
'in the Circulation Ledger itself, from which it appears
'that, since the commencement of this year, it had been
'the habit to add to the weekly return of bullion made
'to Government under 8 and 9 Vict., cap. 38, an imagi-
'nary sum, less or more, according to the emergencies of
'the period, beginning with £60,000 under the first week
'in January, and fluctuating weekly, until, on the 21st
'September, when the last return was made, it reached
'£300,000. The additions thus made are openly and
'regularly entered in the Circulation Ledger in smaller

[1] Accountants' and Solicitors' Report, 'Cash,' p. 2.

'figures, over the amount of gold really on hand at 'Glasgow.

'The summations of the entries in this Ledger, 'vitiated by these additions, were weekly returned to 'Government, and the Bank have thus, under the 14th 'section of the Act, become subject to very heavy penalties 'which, however, under the circumstances, we have not 'thought it right to bring into the Balance-Sheet.'

Here, clearly enough, is a case of the fraudulent contravention of an Act of Parliament designed to protect the lieges, and it behoves us to inquire how such a contravention came to be possible.

The 'Act to regulate the issue of Bank Notes in 'Scotland,'[1] previously referred to as carried by Sir Robert Peel, was intended, while preserving to Scotch Bankers the free note issue which they had previously enjoyed, to prevent the further issue of Notes except with an equivalent in coin at the head office of the Bank. Accordingly, steps were taken under the Act to ascertain the Scotch Banks entitled to the privilege of issuing notes, and the average amount of the notes of each Bank in circulation during the previous year, and this amount, being certified to the Bank by the Commissioners of Stamps and Taxes, became its future authorised circulation. The sixth column in the appended Table of Statistics[2] gives the authorised circulation thus fixed in the case of each Bank, and the eleventh column the notes in circulation at the date of the last Balance-Sheet of each Bank.

Section 6 of the Act provides that 'it shall not be 'lawful for any Banker in Scotland to have in circulation,

[1] 8 and 9 Vict. c. 38, 1845, July 21.
[2] Appendix No. IV., page 155.

'upon the average of a period of four weeks, to be ascer-'tained as hereinafter mentioned, a greater amount of 'Notes than an amount composed of the sum certified by 'the Commissioners of Stamps and Taxes as aforesaid, and 'the monthly average amount of gold and silver coin held 'by such Banker at the head office or principal place of issue 'of such Banker during the same period of four weeks to 'be ascertained in manner hereinafter mentioned.'

The practical result of this enactment, as affecting our existing Banks, is, that while the notes in circulation amounted according to the last Reports of the Banks to £5,532,867

Their authorised circulation, according to the certificates obtained by the Banks under the Act of 1845, amounted to only . 2,676,350

And for the difference of . . . £2,856,517

the Banks were obliged to have at their respective head offices bullion to at least the same amount, of which not more than one-fifth may be silver coin, the rest being gold.

Whatever differences of opinion may have existed regarding the expediency of these statutory provisions at the time, I think I am right in saying that they are now generally admitted to have been wholesome in their effect. Combined with the system of regular exchanges carried out by the Banks, it has been such as thoroughly (with the single exception of the City of Glasgow Bank) to protect the public against the evils of an inflated paper currency; and, except for a day or two during the panic which followed the failure of the Western Bank, there is no instance of the notes of Scotch Banks being refused in this country, or of their value being depreciated below that of

the bullion which they represent. And in the case of the Western Bank it was found, on examination after its failure, that its reserve of bullion was actually £53,805 in excess of the amount required by the Act.[1]

On the failure of the City of Glasgow Bank, the other Banks acted with the most commendable promptitude in at once accepting their notes, and nothing has done more to prevent on this occasion a repetition of the melancholy spectacle which characterised the crisis of 1857,—of a general run upon the Banks for gold instead of notes.

But the fact, since disclosed, that, even assuming its record of notes in circulation to have been correct, the City of Glasgow Bank had palmed off upon an unsuspecting public, and in contravention of the Act, notes to the amount of about £300,000, for which it held no equivalent in coin, forces upon the Legislature, the other Banks, and the public, the consideration of the sufficiency of the safeguards provided by the Act of 1845 against the infraction of provisions which were intended for, and are generally acknowledged to be essential to, the protection of the country in one of its most vital interests.

When these safeguards are examined, they will be found to consist practically in nothing more than requiring from the Banks every week, and publishing every month in the *London Gazette*, a return of the notes in circulation and the coin held to meet them by each Bank. The accounts rendered by the Bank are required by section 7 of the Act to be verified by the signature of the chief cashier, or other officer duly authorised by the Directors, and neglect or refusal to render an account, or rendering at any time a false account, subjects the Bank to a penalty of £100 for

[1] Somers, p. 126.

every such offence. By section 14, also, it is enacted that if the monthly average circulation of Bank notes of any Bank shall at any time exceed the amount which such Bank is authorised to issue and to have in circulation under the provisions of the Act, such Bank shall in every such case forfeit a sum equal to the amount by which the average monthly circulation shall have exceeded the amount which such Bank was authorised to issue.

This last is the clause of the Act under which the City of Glasgow Bank is, as the Investigators have pointed out, subject to such severe penalties. But very prudently, under the circumstances, they have not thought it proper to bring these penalties into their Balance-Sheet. It cannot be supposed that the Government would add such a load to the already intolerable burden of the innocent shareholders. It thus appears that, in the only circumstances under which the Act is ever likely to be infringed, its penalties have proved inoperative as a protection to the public.

But, it may be said, the Commissioners of Stamps and Taxes are empowered by section 12 of the Act to cause the books of the Banks, containing accounts of their bank notes in circulation and of coin held to be inspected, and also to inspect and ascertain the amount of any gold and silver coin held by the Bank; and the Banks are required under penalties to allow such inspection. It is clear, however, from our City Bank experience, that if there were a desire on the part of any Bank manager to disregard the requirements of the Act, no mere matter of book-keeping would be allowed to stand in the way. The fact, I believe, is that the power of inspection has never been exercised by the Commissioners of Stamps and Taxes.

I may now dismiss a matter thus important in the

public interest by merely noting, in conclusion, a provision of the Act which appears to me rather an abuse of certification. Section 11 of the Act, which provides for the publication in the *Gazette* of a general return of the monthly average circulation of notes and of the coin held by each Bank, requires such return to be made, 'certifying 'under the hand of any officer of the said Commissioners 'duly authorised for that purpose, in the case of each such 'Banker, whether such Banker has held the amount of coin 'required by law during the period to which the said return 'shall apply.' It is a curious commentary on the efficiency of the Act that an officer of Inland Revenue certified facts regarding the circulation and the coin of the City of Glasgow Bank of which he could know nothing except upon the information of other people, and which, as so certified during most of this year, turned out not to be facts at all.

The present position of the shareholders of all the Scotch Banks as regards the value of their shares is, that the failure of the City of Glasgow Bank and consequent shock to public confidence, and, still more, the dread of unlimited liability, have rendered Bank stocks unsaleable except at a very serious sacrifice. The average price per cent of the stocks of all the Banks on 1st October last, according to the estimate in the Appendix,[1] was 293·46 per cent.

According to the quotations in the Edinburgh Share-List of 20th November 1878, the average price per cent of the same stocks was only . . 231·08 ,,

being an average loss of . . . 62·38 per cent[2]

[1] Appendix No. III., page 154.

[2] That is, of course, £62 : 7 : 7 on £293 : 9 : 2, being the average price of each £100 paid-up Bank Stock.

to the shareholders. According to the same estimate the total market value of the stock of the ten Scotch Banks on

1st October 1878 was . . .	£26,547,687
On 20th November 1878 it was only .	20,905,230
Being a fall, in seven weeks, of no less than . . .	£5,642,457

Summing up the foregoing observations, the position of our Scotch Banks appears to be shortly as follows:—

1. The doubt has been expressed whether the liability of the shareholders is limited even in our three oldest Banks; but the shareholders of the Bank of Scotland and Royal and British Linen Banks, or rather, perhaps, their Shares, are at least liable for such calls, if any, as are expressly authorised by their respective Act and Charters.

2. The liability of the shareholders of all the other seven Banks is unlimited.

3. Trustees holding Bank stock have been held personally liable for calls if the trust-estate is insufficient to meet them.

4. There is a general belief among practical men in the soundness and stability of all the Scotch Banks.

5. The Western and City of Glasgow Banks, however, enjoyed similar confidence until they respectively failed; and, in the case of the latter, the Directors' Balance-Sheet in June 1878 showed a surplus of assets over liabilities to the amount of a million and a-half pounds; while the Investigators reported in October following that not only the whole of this was lost, but upwards of five millions more, which must now be met by the shareholders, each being liable for the whole to the last farthing of his means.

6. The Directors' Balance-Sheet of the City Bank (which gave information regarding its position of the same general character as the Balance-Sheets submitted annually by the other Banks) afforded no indication of the following facts:—(1) That the Bank had advanced to one customer more than twice the amount of its capital, and to that customer and three others sums amounting to nearly six times its capital; (2) that the Bank Directors had made large advances to some of their own number and their connections; (3) that the Bank had invested very large sums in foreign and speculative Stocks; and (4) that the Bank was the largest holder and dealer in its own shares.

7. Notwithstanding the very general nature of the information submitted by the Directors of all the Banks to their shareholders, the latter exercise no supervision over the former, and the affairs of the Banks are never submitted to any professional and independent audit.

8. While none of the Banks has availed itself of the statutory provisions for limiting the liability of its shareholders, all accept, as such, limited companies,—the members of which are not liable beyond the amount of their shares.

9. In the case of the City of Glasgow Bank the statutory provisions of the Notes Issue Act of 1845, intended for the protection of the public against an inflated paper issue, have been largely contravened, and the penalties thereby incurred being only recoverable, if exacted, from the innocent shareholders, the Act has been found insufficient for the object it was intended to secure.

10. In consequence of shaken confidence and, still more, of dread of unlimited liability, Bank Stocks are unsaleable except at a serious sacrifice.

The redeeming features in this position of matters are to be found in the noble spirit with which the unfortunate shareholders of the City Bank are struggling with adversity; the generous sympathy they are receiving from their fellow-countrymen; the confidence with which the other Banks are regarded by the public; and the disposition to stand by and trust each other manifested by the Banks themselves. Trade is depressed, and the future is full of anxiety, but the courage and integrity and thoughtfulness of the people render them even better able to think and act wisely for themselves under such pressure than in the sunshine of prosperity. It is in these circumstances, therefore, that I venture to submit a few practical suggestions as to

III.—The Policy of the Scotch Banks.

We are indebted to the *Scotsman* of 31st October 1878 for the following opportune communication of the views of M. Wirth, a German economist, who wrote to the *Augsburg Gazette* on the Bank failure as follows:—

'The fate of the City of Glasgow Bank, which had for long been 'kept agoing by false book-keeping, may be regarded abstractly as 'a consequence of the great crisis of 1873; concretely, it is merely 'an isolated event which might have occurred at any time in 'consequence of the criminal management of the directors. But 'what is still worse is the fact that this enormous failure will 'have to be borne by the shareholders, since the Bank had not 'availed itself of the new legislation, but, notwithstanding its 'suspension in 1857, has retained its old organisation with the 'unlimited liability of its collective shareholders. Already in '1857, when the suspension of the City of Glasgow Bank was 'brought about by the failure of the Western Bank, the origin of 'the evil was seen to be in its organisation, by which the directors

'were tempted to boundless imprudence and reckless speculation. 'We gave public expression to this conviction at that time, when 'the total liabilities of the Western Bank amounted to six million 'pounds sterling, whilst among the shareholders were some of the 'richest landed proprietors and largest capitalists of Scotland. 'At present the liabilities of the City of Glasgow Bank amount to 'twelve and a half million pounds sterling, while the shareholders 'are mostly private persons belonging to the middle classes. In 'criticising the crisis of 1857, we published the warning 'that the '' unlimited security was for the most part merely nominal, tempt- '' ing the public to a confidence so blind that, forgetting all in- '' dependent inquiry, they will commit their means at haphazard '' to persons who, on the strength of this collective guarantee, can '' indulge without restraint their propensity to extravagant specula- '' tion.' On the occasion of the Western Bank failure we remarked '—'The unlimited liability of the shareholders has afforded no '' guarantee for the solidity of the Bank, and the numerous '' meetings of shareholders and depositors of the different Banks '' which have been held everywhere displayed the same reckless '' misconceptions.' . . . 'It would be very different were the 'depositors and other creditors of a bank as well as the share- 'holders to lose their money in the event of its failure. In that 'case the parties concerned would suffer greater or less losses; 'but, as a rule, their means of living would not be thereby 'threatened. From the statistics of the Bank it may be clearly 'inferred that most of the shareholders will lose their whole pro- 'perty. Those of them, such as the widows and orphans, who 'depended on their dividends, will be plunged in the deepest 'poverty. All this out of devotion to an antiquated doctrinaire 'principle which the founders of such associations regard from a 'theoretical point of view, and not as it works in practical life. 'For that the shareholders are not in a position to exercise an 'effective control, the history of trade ought by this time to have 'clearly taught us.'

It often happens that people at a distance from the

scene of any great catastrophe or struggle, which excites the passions or the sympathies of those engaged in it and obscures their judgment, are able, from a sort of birds' eye view, to form a clearer conception than the actors themselves of its causes and probable results. M. Wirth appears in this case to have done so, and I was pleased to find that the conclusions which had forced themselves on my mind in reflecting on the recent failure had so long ago been arrived at by one who has evidently eminent qualifications for forming a sound opinion on the subject.

But while I have no expectation of putting the case more clearly than M. Wirth has done, I wish to consider the future policy of our Banks more in detail and in various aspects. I propose, therefore, to submit such observations as occur to me in the following order:— (1) Is it *right* to undertake unlimited liability as Bank shareholders? (2) Is unlimited liability expedient? (3) If it be neither right nor expedient, what is the remedy for our present system? (4) How can the remedy be best applied? And (5) Is it possible to afford any relief to shareholders in the meantime?

1. *Is it* RIGHT *to undertake Unlimited Liability as Bank Shareholders?*

Every person who engages in trade undertakes unlimited liability for the obligations which he incurs; and it is because, in the eye of the common law, banking is a trade, that every one who engages in it, either alone, as a member of a private firm, or as a partner or shareholder of a joint-stock company, is held liable to the last farthing of his means for the obligations which he or his firm, or the directors, to whom in the case of a company

the partners delegate their powers, incur in the prosecution of this trade.

The business of life cannot be transacted by individuals without incurring unlimited liability, and no one would think of evading responsibility for his own acts or for those of his partners, provided, in the latter case, he has the opportunity, which no partner should surrender, of exercising an efficient control over his partners' actions. But I think I have shown clearly enough, in treating the first branch of my subject, that the ordinary shareholder in a Joint-Stock Bank—as such institutions have hitherto been managed—has practically neither cognisance nor control of its business. The Directorate is a corporation of the closest kind, and, as M. Wirth says—'That the 'shareholders are not in a position to exercise an effective 'control, the history of trade ought by this time to have 'clearly taught us.'

The position of the ordinary Bank shareholder is therefore this.—He has taken a share in a joint-stock banking business, which subjects him to all the unlimited liabilities of a partner; but although he is supposed, theoretically, to have a voice in the appointment of the Directors, they are really a self-electing body, and, as Banks are at present constituted, the Directors are neither accustomed nor expected to give other than the most vague and general reports of their management; and the ordinary shareholder does not possess the necessary *data*, even if he had the desire, to make any inquiry on the subject. His only resource is a blind trust in the management.

If the surrender of all control over the management of a business so risky involved only himself in unlimited liability, the Bank shareholder's position might be defended very much on the principle on which it may be maintained, on purely worldly grounds, that a man without dependants is entitled to commit suicide if he thinks proper. But no man, however friendless, can pass through the world without incurring some pecuniary obligations to his fellow-creatures. In the administration of his own business or his own household, he knows the extent of the obligations he incurs, and can make provision for them; but if he is at the same time an ordinary shareholder in an unlimited Banking Company, he has entered blindfold into obligations, the extent of which he has no means of measuring, and any morning he may awake—as the City Bank shareholders did on 2d October last—to find himself a ruined man. He may have occupied previously a good position in society—retired perhaps on a competency or engaged in professional work; but in neither case does he place 'Banker' on his door-plate, and those with whom he deals or contracts as an individual have no means of knowing the risks they run in trusting him. If ruin come upon him through the Bank, it may rank upon his estate for its whole liabilities; while the ordinary creditor, who knew nothing of this latent trade on the part of his debtor, must be content to share along with the Bank such dividend as the bankrupt shareholder's estate affords. The Bank shareholder is thus unable to tell at any moment whether he will be able to pay for the goods he orders, and it may well be doubted whether, in these circumstances, he can honestly contract any debt at all. If he wishes to have a conscience void of offence, his only course is to sell his Bank shares.

While this is the relation of the Bank shareholder to his ordinary creditors, obligations not less cogent exist

between him and his wife and family and dependants. It is not my part to preach on this subject, but no one can forget, in the face of the calamities which shareholders of the City of Glasgow Bank have brought upon their wives, children, and relatives, and even the friends they had selected as Trustees, the solemn words in which we have been reminded, that 'if any provide not for his own, and 'specially for those of his own house, he hath denied the 'faith, and is worse than an infidel.' How many to whom City of Glasgow Bank shares had been left regard them now as a heritage of woe! The moral of the Bank failure has been powerfully pointed from many a pulpit. It is easy to hold up the Directors to opprobrium, but does no blame lie at the door of all Bank shareholders, who, content to throw on the Directors the whole responsibilities of a difficult position, may be said to have led those of the City Bank into the temptation under which they fell? That the blind trust of our present system is twice cursed —cursing both him who gives and him who takes—can receive no better illustration than the fact that the Directors, Manager, and Secretary of the City of Glasgow Bank are all now awaiting their trial on criminal charges, while ruin stares its shareholders in the face; and not merely are the depositors suffering inconvenience, but many people are affected by the severe depression of all Bank and other stocks, and every one feels the discredit which has been brought upon the country.

2. *Is Unlimited Liability expedient?*

We hear of the honour of the 'Scotch Banking System' being involved in the full payment of all the depositors and creditors of the Bank. I can understand this result being

necessary for the vindication of the law, which must be applied as it exists to the present case; but the question is, whether it is expedient that the shareholders of other Banks should remain subject to a law which involves the sacrifice of their whole estate to relieve the depositors of any loss? We have seen that, so far as concerns control over the management of the Bank, the ordinary shareholder is in no better position than the depositor. The only difference in their position is, that while the shareholder contributes to the establishment of the Bank, and thereby provides both the borrowing and the investing public with an institution of great utility, looking for his return to the profits of the business, the depositor takes advantage of the Bank so established by placing his money there, looking for his return in the shape of interest. If the business be unsuccessful, the shareholder, under the present system, is the only loser. All he has in the world must go to save the depositor from loss. What I submit is, that the ordinary shareholder not having practically more control over the management than the depositor, it is not equitable to impose upon the former the whole responsibility. Equity, I think, would be better met by restricting the shareholder's liability to the capital he has contributed or subscribed—a definite fund of which the depositor can estimate the sufficiency; and if, in case of misfortune, the shareholder gives up this to the depositor, the latter cannot, in my opinion, reasonably look for more.

In claiming this limitation of liability for the ordinary shareholder—who being deprived of all control is really only a lender to the Bank (for a share of its profits) of funds managed exclusively by its directors—I ask no more

than the equitable relief which has already been extended by statute to other parties virtually in the same position.

On 5th July 1865 an Act[1] was passed '*To Amend the Law of Partnership*,' the first section of which provides that 'The advance of money, by way of loan, to a person' (which includes a Joint-Stock Company) 'engaged or about 'to engage in any trade or undertaking, upon a contract 'in writing with such person that the lender shall receive 'a rate of interest varying with the profits, or shall receive 'a share of the profits arising from carrying on such trade 'or undertaking, shall not, of itself, constitute the lender 'a partner with the person or the persons carrying on such 'trade or undertaking, or render him responsible as such.' But Section 5 of the Act provides that 'In the event of 'any such trader, as aforesaid, being adjudged a bank-'rupt, or taking the benefit of any Act for the relief of 'insolvent debtors, or entering into an arrangement to pay 'his creditors less than twenty shillings in the pound, or 'dying in insolvent circumstances, the lender of any such 'loan, as aforesaid, shall not be entitled to recover any 'portion of his principal, or of the profits or interest pay-'able in respect of such loan,' 'until the claims of the 'other creditors of the said trader for valuable considera-'tion in money or money's worth have been satisfied.'

If, therefore, the ordinary shareholder be regarded as the 'lender' and the directors of the Bank as the 'trader' under this Act, the position of a Bank shareholder, with the limited liability for the principle of which I am contending, would be exactly that for which equitable relief has been provided by this Act, assuming, of course, that the liability of the Bank directors shall remain unlimited.

[1] 28 and 29 Vict. c. 86.

But it is perhaps unnecessary to plead for limited liability as a matter of principle, seeing that it has long ago been conceded by the Legislature. When the limited liability of shareholders in 'undertakings of a public nature,' introduced by the 'Companies' Clauses Act' of 1845, was extended by 'The Joint-Stock Companies' Act, 1856,'[1] to 'seven or more persons associated for any lawful purpose,' it was provided (Sec. 2) that the Act should 'not apply to 'persons associated together for the purpose of Banking 'or Insurance.' And 'The Joint-Stock Banking Com-'panies' Act, 1857,'[2] which repealed that section so far as 'relates to persons associated together for the purpose of 'Banking,' did so, 'subject to this proviso, that no existing 'or future Banking Company shall be registered as a 'Limited Company.' But the impolicy of this restriction was acknowledged by the Legislature in the following year, when, on 2d August 1858, an Act[3] was passed 'To enable 'Joint-Stock Banking Companies to be formed on the 'principle of Limited Liability.' The Preamble of this Act is as follows:—'Whereas *it is expedient* to enable 'Banking Companies to be formed on the principle of 'Limited Liability.' The Legislature may therefore be appealed to as having acknowledged the expediency of applying to Banks the principle of Limited Liability.

But, after all, expediency is best demonstrated if one can appeal to successful practice; and, considering the popular belief which has long existed in the limited liability of our three oldest Banks, the facts of their remarkable success, and of their having received the favour of the public and the Courts more fully perhaps than the un-

[1] 19 and 20 Vict. cap. 47. [2] 20 and 21 Vict. cap. 49.
[3] 21 and 22 Vict. cap. 91.

limited Banks, form perhaps the most cogent argument which can be adduced in favour of the expediency of the limited liability of our Banks.

It is a remarkable fact that the Bank of England and the Bank of Ireland are both limited, and the statistics of these and some other Limited Banks in England and Ireland, are printed in the Appendix[1] for the purpose of comparison with those of our unlimited Scotch Banks.

I have also prepared from authentic returns, which I happened to possess, a Table of the Statistics of thirteen of the Banks of Australasia,[2] all limited, and all proving, either by the general amounts of their reserves and their deposits, or the dividends which they yield, that, as regards the confidence they enjoy and the success they have achieved, they may bear comparison with any of our unlimited Scotch Banks, allowance being made for the comparatively short existence of these Colonial Banks. The same remark holds good with reference to the Canadian Banks, in which I believe the liability of the shareholders is limited by law to a call of cent per cent of the subscribed shares. I am not aware, either, of any such failures having occurred among our Colonial limited Banks, as within twenty-one years have twice shaken the credit of our country to its centre and brought wide-spread ruin upon the people.

The limited liability of Banks has a direct tendency to promote good, careful, and open management. Limited Banks, which cannot hold out to the public the unlimited responsibility of their shareholders, must depend for the confidence and custom of the depositing public on their good character. Hence they avoid all transactions of undue

[1] Appendix No. V., p. 156. [2] Appendix No. VI., p. 157.

magnitude or risk, because these, if known, would shake the confidence of depositors, which is essential to the very existence of the Bank, and when the confidence of depositors is won, their interests are identified with those of the Bank, and the depositors are less likely to give way to panics. Limited Banks feel bound also to maintain strong reserves, and to provide such an independent and thorough audit of their affairs as will give confidence to the public.

On the other hand, as M. Wirth pointed out so well in criticising the crisis of 1857, the unlimited security offered by our system is 'for the most part merely nominal, 'tempting the public to a confidence so blind that, for-'getting all independent inquiry, they will commit their 'means at haphazard to persons who, on the strength of 'this collective guarantee, can indulge without restraint 'their propensity to extravagant speculation.'

This leads me to refer, in conclusion, to a fact which appears to leave our Scotch banks no alternative but the general adoption of the principle of limited liability, so as to secure the protection to *all* the shareholders and to the public which the Companies' Acts provide in the case of Banks formed or registered as Companies limited by shares. I allude to the circumstances already mentioned that our Unlimited Banks number Limited Companies among their shareholders, and that the formation of a Limited Company for the sole purpose of acquiring Bank Stock in the present depressed market, and of enabling its shareholders, by that means, to reap the advantages, without the unlimited liability, of the other shareholders in the Scotch Banks, is now in contemplation. There is indeed nothing, so far as I can see, to prevent the formation of an Association of

the shareholders of each Bank as a Limited Company for the purpose of holding the shares which at present stand in their individual names—these being taken over by the Limited Association in exchange for a corresponding amount of its own shares, and the Association being at liberty also to purchase for cash the shares of the Bank which come into the market. It may thus happen that all or most of the stock of a Bank supposed to be unlimited is held in reality by a Limited Company; and thus, by a mere device, the supposed unlimited security offered by the Bank in the unlimited liability of its shareholders would be less valuable to the depositors than if the Bank itself were to register as a Company limited by shares. In the latter case, the Bank itself, becoming a Limited Company, would be subject to the safeguards provided by the Companies' Acts for the protection of shareholders and creditors; while, by the device under consideration, a Bank supposed to be unlimited might represent merely the Limited Company formed for the protection of its shareholders, and evade at the same time the fulfilment of the various provisos, required by the Companies' Acts for the protection of the public, from a Bank formed or registered as a Company limited by shares.

It is obvious enough that, having regard to the fall in the prices of Bank stock which has lately occurred, and is likely to continue so long as its possession entails unlimited liability, our Bank shareholders will resort, for their own protection and in order to realise their shares without serious loss, to such means of protecting their interests as the Companies' Acts afford, unless some more general relief can be provided for them.

In these circumstances there do not appear to me to be

any grounds of expediency for maintaining longer the unlimited liability of the shareholders of our Scotch Banks.

3. *If Unlimited Liability be neither right nor expedient, what is the remedy for our present system?*[1]

The reply to this question will, according to my view, be found in the extracts from the Companies' Acts 1862 and 1867, so far as bearing on the registration of existing Joint-Stock Banks as companies limited by shares, which I have printed in the Appendix.[2] These Acts make provision for such registration, and that would enable all our Scotch Banks to obtain limited liability for their shareholders without any appeal to the Legislature, if only three-fourths of the shareholders of each Bank shall resolve to take the necessary steps under the Acts for that purpose.

In order that such of my readers as are not acquainted with the Companies' Acts of 1862 and 1867, or are not accustomed to digest statutory provisions, may understand the course which Bank shareholders require to follow in order to obtain limited liability, I am now to place before them, as distinctly as I can, (1) the steps prescribed by the Acts for that purpose; (2) their effect as regards the liabilities of the shareholders; (3) their effect as regards the creditors of the Bank; and (4) their effect on the administration of the Bank.

(1.) The steps prescribed by the Acts for the purpose of obtaining Limited Liability.

A. Every one of our Scotch Banks being a Joint-Stock

[1] Having found it impossible, with due regard to precision of language, to divest this branch of my subject of technicalities, the non-professional reader may, if so inclined, skip six pages here.

[2] Appendix No. VII., p. 158.

Company as defined by the Companies' Act 1862, sec. 181[1] —*i.e.* 'A company having a permanent paid-up or nominal 'capital of fixed amount, divided into shares also of fixed 'amount, or held and transferable as stock, or divided and 'held partly in one way and partly in the other, and formed 'on the principle of having for its members the holders of 'shares in such capital, or the holders of such stock, and 'no other persons'—is entitled to register under the Companies' Acts; and, when so registered with limited liability, it 'shall be deemed to be a company limited by shares.'

B. The first step towards registration as a limited company under the Acts is to summon a general meeting of shareholders for the purpose.[2]

C. At this meeting an assent to the company so registering must be given by not less than three-fourths of the members present, personally or by proxy.[3]

D. 'Every Banking Company' . . . 'which registers 'itself as a limited company shall, at least thirty days pre- 'vious to obtaining a certificate of registration with limited 'liability, give notice that it is intended so to register the 'same to every person and partnership firm who have a 'banking account with the company.'[4]

E. Previous to registration there must be delivered to the Registrar of Joint-Stock Companies:[5]—

1. A list of the members, with the shares or stock held by them respectively.[6]
2. A copy of any Act of Parliament, charter, or contract constituting or regulating the company.[7]

[1] Sec. 181, p. 163. [2] Sec. 179, sub-sec. 4, p. 162.
[3] Sec. 179, sub-sec. 5, p. 162. [4] Sec. 188, p. 165.
[5] Sec. 183, p. 163. [6] Sec. 183, sub-sec. 1, and sec. 185, p. 164.
[7] Sec. 183, sub-sec. 2, p. 164.

3. A statement[1] specifying
   - The nominal capital and number of shares or amount of stock;[2]
   - The number of shares taken, and amount paid on each, or the amount of stock;[2]
   - The name of the company, with the addition of the word 'Limited.'[1]

F. 'Any company authorised' . . . 'to register with 'limited liability shall, for the purpose of obtaining regi- 'stration with limited liability, change its name by adding 'thereto the word 'Limited.''[3]

G. Upon compliance with these requisitions and payment of the fees exigible, the Registrar shall certify that the company so applying for registration is incorporated as a company under the Acts, and, in the case of a limited company, that it is limited.[4]

(2.) The effect of Registration with Limited Liability as regards the Liabilities of the Shareholders.

A. In the event of a registered company being wound up—

'1. No past member shall be liable to contribute to 'the assets of the company if he has ceased to 'be a member for a period of one year or upwards 'prior to the commencement of the winding-up:

'2. No past member shall be liable to contribute in 'respect of any debt or liability of the company 'contracted after the time at which he ceased 'to be a member:

[1] Sec. 183, sub-sec. 3, p. 164. [2] Sec. 183, and sec. 185, p. 164.
[3] Sec. 190, p. 165. [4] Sec. 191, p. 165.

'3. No past member shall be liable to contribute to 'the assets of the company, unless it appears 'to the Court that the existing members are 'unable to satisfy the contributions required 'to be made by them in pursuance of this Act:

'4. *In the case of a company limited by shares, no 'contribution shall be required from any member exceeding the amount, if any, unpaid on 'the shares in respect of which he is liable as a 'present or past member.*'[1]

B. But 'no banking company claiming to issue notes 'in the United Kingdom shall be entitled to limited 'liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if 'necessary, the assets shall be marshalled for the benefit 'of the general creditors, and the members shall be liable 'for the whole amount of the issue, in addition to the 'sum for which they would be liable as members of a 'limited company.'[2]

C. 'The registration in pursuance of this part of this 'Act of any company shall not affect or prejudice the 'liability of such company to have enforced against it, or 'its rights to enforce, any debt or obligation incurred, or 'any contract entered into, by, to, with, or on behalf of 'such company previously to such registration.'[3]

D. All such legal proceedings as may at the time of registration have been commenced by or against the company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company upon any decree obtained in any action so commenced; but in the event of the property and effects of the company being insufficient to satisfy such decree, an order may be obtained for winding up the company.[1]

[1] Sec. 38, p. 158. [2] Sec. 182, p. 163. [3] Sec. 195, p. 166.

E. Provision may be made that the liability of the directors of the company shall be unlimited.[2] For provisos regulating such liability of directors, see sec. 5 of Companies' Act, 1867. Appendix No. VII. page 169.

(3.) The effects of Registration with Limited Liability as regards the Creditors of the Bank.

A. In case of omission to give notice of intention to register, 'then, as between the company and the person or 'persons only who are for the time being interested in the 'account in respect of which such notice ought to have 'been given, and so far as respects such account and all 'variations thereof down to the time at which such notice 'shall be given, but not further or otherwise, the certificate 'of registration with limited liability shall have no 'operation.'[3]

B. The registration of any company shall not prejudice its liability to have enforced against it any debt or obligation incurred, or any contract entered into by, to, with, or on behalf of, such company previously to such registration.[4]

C. In the event of a company being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the

[1] Sec. 195, p. 166. [2] Companies' Act, 1867, sec. 4, p. 169.
[3] Sec. 188, p. 165. [4] Sec. 194, p. 166.

winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves; with this qualification, that, in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member.[1]

D. The holder of Bank-notes issued by any Banking company shall, notwithstanding its registration as a limited company, be entitled to recover the full value of such notes in the same way as if such company were subject to unlimited liability.[2]

(4.) The effect of Registration with Limited Liability as regards the administration of the Bank.

A. 'Every limited Banking company' 'shall on the 'first *Monday* in *February* and the first *Monday* in '*August* in every year during which it carries on business, make a statement in the Form marked D[3] in the 'First Schedule hereto, or as near thereto as circumstances 'will admit, and a copy of such statement shall be put up 'in a conspicuous place in the registered office of the 'company, and in every branch office or place where the 'business of the company is carried on.[4]

'When a company is registered,' 'all provisions contained in any Act of Parliament, deed of settlement, 'contract of copartnery, cost-book regulations, letters 'patent, or other instrument constituting or regulating 'the company,' 'shall be deemed to be conditions and

[1] Sec. 38, p. 158. [2] Sec. 182, p. 163.
[3] For Form D see Appendix, p. 159. [4] Sec. 44, p. 159.

'regulations of the company, in the same manner and with 'the same incidents as if they were contained in a registered 'Memorandum of Association and Articles of Association; 'and all the provisions of this Act shall apply to such 'company and the members, contributories, and creditors 'thereof, in the same manner in all respects as if it had 'been formed under this Act, subject to the provisions following (that is to say):— . . .

'3. That no company shall have power to alter any 'provision contained in any Act of Parliament 'relating to the company:

'4. That no company shall have power, without the 'sanction of the Board of Trade, to alter any 'provision contained in any letters patent 'relating to the company: . . .

'6. That nothing herein contained shall authorise any 'company to alter any such provisions contained in any deed of settlement, contract of co-'partnery, cost-book regulations, letters patent, 'or other instrument constituting or regulating 'the company, as would, if such company had 'originally been formed under this Act, have 'been contained in the Memorandum of Association, and are not authorised to be altered by 'this Act:

'But nothing herein contained shall derogate from any 'power of altering its constitution or regulations which 'may be vested in any company registering under this 'Act in pursuance of this part thereof, by virtue of any 'Act of Parliament, deed of settlement, contract of co-'partnery, letters-patent, or other instrument constituting 'or regulating the company.'[1]

[1] Sec. 196, p. 167.

'B. Subject to the provisions of this Act, and to 'the conditions contained in the Memorandum of Asso-'ciation, any company formed under this Act may, in 'general meeting from time to time, by passing a special 'resolution in manner hereinafter mentioned, alter all or 'any of the regulations of the company contained in the 'Articles of Association,' . . . 'or make new regulations 'to the exclusion of or in addition to all or any of the 'regulations of the company; and any regulations so made 'by special resolution shall be deemed to be regulations of 'the company of the same validity as if they had been 'originally contained in the Articles of Association, and 'shall be subject in like manner to be altered or modi-'fied by any subsequent special resolution.'[1]

As regards the administration of the Bank, Section 50 of the Act, being the last above quoted, is the most important, conferring, as it does, power on the shareholders, in general meeting from time to time, to pass a special resolution altering all or any of the regulations of the Bank, or making new regulations, which are declared to have the same effect as if they had been original Articles of Association of the Bank.

The form and details of the annual balance-sheet of the Bank, the audit of its accounts,[2] the extent, if any, to which Directors shall be entitled to borrow from the Bank, the loss of capital which shall terminate the existence of the Bank, and many other important provisions fitted to check such abuses of banking as have been already referred to, might all be regulated by such special resolutions of the shareholders, as effectually as if made the

[1] Sec. 50, p. 160.

[2] Appendix, p. 161, '*Audit.*'

subject of legislation; and these special resolutions might be amended from time to time in the same way.

The Companies' Acts of 1862 and 1867 afford, in short, a complete and easy remedy for the unlimited liability of shareholders and all the other evils of our present system of banking.

This remedy, as has been seen, is in the hands of the Bank shareholders themselves. If they shall resolve to avail themselves of it while the dire calamities attending our present unlimited system are fresh in the minds of the public, the shareholders will receive, I venture to predict, the hearty sympathy and co-operation of the public. But if, after being made fully aware of their responsibilities, the shareholders shall resolve again to brave them, an appeal to the public to relieve shareholders ruined by a new Bank failure will not be entitled to any such generous and liberal response as the nation is giving now. We are all losers and sufferers, more or less, by the depreciation which every species of property and stock has suffered in consequence of the failure of the City of Glasgow Bank. If, after one fatal eruption, the people who reside on the edge of a volcano are offered safer and equally good houses in the plain, but prefer to remain in their former position, they cannot expect that, when a second eruption occurs, their sufferings will receive the same commiseration as before.

4. *How can the Remedy be best applied?*

This is a question which, if it be resolved by the Scotch Banks generally to adopt the principle of limited liability, can be best answered by the able and experienced men of business in the management and direction of the Banks.

But sometimes even crude suggestions from outsiders

develop, in the minds of practical men, into valuable ideas; and being entirely unconnected with the Banking interest, and without any other aim than to place clearly before the public a reform which I consider essential to the healthy administration of our Banking system, I propose, with all deference, and merely by way of suggestion, to submit for consideration the ideas that have occurred to me regarding the practical course to be followed in carrying out this reform. In order the better to attain the object aimed at, my suggestions will be made as precise and practical as possible.

1. Remedy General.—The adoption of the principle of limited liability ought, if possible, to be universal and simultaneous among our Scotch Banks. What is good for one should be good for all; and as regards the public, it is of great importance that all the Banks should be constituted alike. Whatever claim our three oldest Banks may make to limited liability, it is desirable, in the interest both of the shareholders and the public, that no doubt should exist on such a point.

2. Preliminary Enquiry.—For the satisfaction of the creditors of the Banks and the public, their registration under limited liability should be preceded by a professional audit of the affairs of each Bank, and a full report thereon, first to the shareholders, and through them —probably in less detail—to the public. The accountants, &c., who will be appointed by the shareholders to examine the affairs of each Bank, and report thereon, should determine, by previous consultation with each other, the principles on which their investigation should be conducted.

3. General Agreement as to Future Audit and Balance-Sheets, &c.—One advantage of such a preliminary audit by professional men acting in concert with each other and with the Managers of the Banks is, that they would be able, after concluding it, to suggest the model of a Balance-Sheet to be followed as closely as practicable by future auditors. Such a model Balance-Sheet, and the regulations which may require to be adopted by each Bank after registration as a limited company, might be so shaped as to meet the position of all the Banks, and enable them to work under a general system clearly understood by the public. As regards the nature of the audit, which is sometimes objected to by Bankers as necessarily either impracticable or perfunctory, we are receiving valuable suggestions every day; and much instruction seems derivable on this head from the Swedish system of Banking, as explained by Mr. Palgrave in his "Notes on Banking," and in an interesting letter from Mr. Carnegie of Stronvar, which appeared in the *Edinburgh Courant* and *North British Daily Mail* of 18th November 1878. But any audit would surely be better than none. It may be for consideration whether, in order effectually to check the abuses which have been so mischievous in the past, the model Balance-Sheet should not provide for—

(1.) *A graduated List of the Debts due by the Bank's Customers*, stating so many under £1000, so many under £2000, £3000, £5000, £10,000, £15,000, and so on; so as, without disclosing private matters, to give the shareholders and the public some idea of the extent to which their interests may be involved with those of individuals. It may be argued by Bankers that such a system would deprive them of some of their largest and most remunerative accounts, and that if the Bank's advances are sufficiently secured it does not matter how large the debt of

any individual customer may be. But, with deference, I should imagine it neither safe nor expedient to lock up the funds of a Bank to any preponderating amount in the hands of any single customer. It is this system which, when such a customer in times of depression requires further advances, induces the Bank, in order to avoid loss by his failure in bad times, to increase the advances till they become out of all proportion to the resources of the Bank itself. The enormous amounts which, in the cases of the Western and City of Glasgow Banks, were advanced to a few individuals or firms, who thus became identified with the stability of the Banks themselves, have been clearly proved to have been the main causes of the ruin of these Banks. I venture, not without hesitation, to ask whether the interests of these great trading houses could not be as well served if the Banks were to adopt some such system as, in the case of Insurance Companies, is known as 'Reinsurance'? Recognising the danger of having too much insured upon any one life, the Insurance Companies have a limit of from £5000 to £10,000, beyond which they do not undertake any risk on a single life. If the insurer wishes a policy for a larger sum, the Insurance Company applied to issues it, but *reinsures* with other offices for the amount by which the policy exceeds the limit of risk which the Insurance Company undertakes. The ingenuity of our Bankers might, I should think, devise some similar arrangement by which a Bank could get other Banks to share the risks of advances to its large customers. But even if any such arrangement should be considered impracticable, and the reporting of the amounts of the Bank's advances to its customers should have the effect of restricting the credits hitherto allowed to large commercial houses, I am inclined to think the results would be salutary. The utility of the Banks of this country as lenders consists mainly in providing the legitimate trader of good character and credit with reasonable facilities for the extension of his trade upon a sound basis; and it is not good either for the trader himself or the public to have his credit artificially swollen by large Bank advances. The ends of sound trade and the public interest will, I believe, be much better served if the Banks, instead of affording large advances to large traders, shall be induced, by the salutary operation of a graduated list of the debts due by their customers published annually in their Balance-Sheets, to spread their advances over a larger area of customers.

(2.) *Advances made to the Directors* themselves or their firms ought also to be disclosed in the annual Balance-Sheet, if, indeed, it shall not be considered more consistent with the position of trust which Directors occupy towards the shareholders of the Bank that they should adopt a self-denying ordinance on this subject.

(3.) *The Investments held by the Bank*, absolutely, ought also, I submit, to be clearly disclosed in the Balance-Sheet; and

(4.) *The amount of its own Stock held by the Bank.*

4. Regulations.—Of the Regulations to be adopted by a special resolution of each Bank when it shall have registered as a company limited by shares, perhaps the most important, after providing for a regular professional audit, already considered, will be

(1.) *The Restriction or Increase of the Capital of the Bank*, so as to leave such a reasonable margin of uncalled capital as will afford a sufficient guarantee to depositors,

in addition to the paid-up capital, without imposing on the shareholders an undue liability beyond the amount paid on their shares.

(2.) *Unlimited Liability of Directors.*—Another very important consideration arising under the provisions of the Companies' Act, 1867, affecting Directors, will be whether they should not, as the parties really vested with the control and management of the Bank, resolve to undertake unlimited liability while they hold office. It is a usual provision in the contracts of Banks and other joint-stock companies, that when a certain proportion of the capital has been lost, the shareholders shall be consulted as to continuing the business or winding up the company. Unfortunately this salutary provision is often neglected by Directors, and the position of the company is only disclosed to the shareholders when the losses have been such as to preclude any other course than a winding-up. Directors with unlimited liability would of course have a strong inducement to be more candid with the shareholders. On the other hand, there does not seem to be any undue hardship to Directors in expecting them to undertake unlimited liability while that of the ordinary shareholders is limited. The Directors alone have the opportunity of satisfying themselves as to the soundness of the Bank, and by undertaking unlimited liability in connection with it they will evince their own confidence and at the same time increase that of the shareholders and the public. And when, as in the case of the Banks with which we are dealing, an institution is sound, a Director does not incur any serious or necessarily continuing responsibility by accepting office with unlimited liability. On referring to section 5 of the Companies' Act, 1867, it will be observed that a Director is relieved of unlimited liability in a year after the date of his retirement; that he is in no case liable (except as an ordinary shareholder and within the same limits) for any debt or liability of the company contracted after the time at which he ceased to hold office; and that 'no contribution required from any Director or 'Manager shall exceed the amount (if any) which he is 'liable to contribute as an ordinary member, unless the 'Court deems it necessary to require such contribution in 'order to satisfy the debts and liabilities of the company, 'and the costs, charges, and expenses of the winding-up.'[1]

In these circumstances I should not anticipate any objection on the part of the Directors of our Banks generally to continue subject to unlimited liability while they hold office, although the liability of the other shareholders is limited. But such an undertaking on their part would naturally evoke from the shareholders a proposal to remunerate the services of the Directorate on a more liberal scale than hitherto. What such remuneration should be, and whether it should take the shape of a percentage on the net profits of each year, is a question which might well be considered and reported on by the professional men to be engaged in the suggested audit.

The only other suggestions I have to offer under this branch of my subject have reference to

5. A Proposed Act of Parliament.—It occurs to me that there are three matters which would require the intervention of the Legislature to place them on a proper footing:—

(1.) More stringent provisions are evidently necessary to secure the due observance of the Act of 1845 'to

[1] Appendix No. VII., p. 170.

'regulate the issue of Bank Notes in Scotland;' and such provisions would also be useful in securing a practical restriction of the unlimited liability to which, under section 182 of the 'Companies' Act, 1862,'[1] the Banks, although registered with limited liability, would still remain subject in respect of the notes issued by them respectively.

Besides the proved insufficiency of the precautions prescribed by the Act for securing that no Bank shall issue notes beyond its authorised circulation without having coin at its head office to an equivalent amount, it appears to me that one great drawback to the security which it was thereby intended to provide for the public, holding notes of the Bank, is that, in the event of a Bank's failure, even if—as in the case of the Western Bank—there is coin at its head office sufficient to meet the notes in circulation above the authorised issue, such coin is not reserved for the holders of the notes, but forms part of the general assets of the Bank available for payment of its ordinary creditors. In the event, therefore, of the shareholders proving unable to meet the whole liabilities of the Bank, the holders of its notes would require to rank therefor along with the other creditors on the assets of the Bank. The same result would follow although the Banks were to register with limited liability.

To obviate these difficulties and to restrict the amount of unlimited liability in respect of notes, which the shareholders of even a limited Bank would require to encounter, I venture, with deference, to suggest a statutory enactment under which the coin necessary to meet the *minimum* amount of notes issued by the Banks in excess of their authorised circulation, as such minimum might be ascer-

[1] Appendix No. VII., p. 163.

tained from the returns of a given year, would be deposited in a safe of the Bank, the key being placed in the custody of a sworn officer under the Commissioners of Stamps and Taxes, and that the coin required to meet the extra floating circulation should be placed in the custody of the cashier, or other officer of the Bank duly authorised by its Directors, who shall be sworn not to surrender the custody thereof, so far as required to meet the extra note-circulation, except with the cognisance of the Commissioners of Inland Revenue, whose officer shall hold a duplicate key to the Bank safe in which such coin is deposited. It might also be enacted that the coin so held to meet the notes should be applicable only in payment thereof, and should not form part of the general assets of the Bank, or be liable to the claims of its other creditors in the event of the Bank becoming bankrupt or being wound up.

In order to afford some check against an undue issue of Bank notes, it might also be enacted that the Banks should not, after a day to be fixed, issue any note unless the same shall be numbered and registered by a sworn officer appointed by the Commissioners of Stamps and Taxes to register the notes. Such registrar, in numbering from time to time the notes presented to him by the different Banks for registration, should be empowered to require delivery of old notes of the corresponding numbers; and by some such means—into the details of which it is unnecessary to enter now—a valuable check would be obtained against any over-issue of notes.

Such regulations could not fail to have a salutary effect in preserving the confidence of the public in the Bank notes of Scotland; and the expense of carrying them out, which need not be great, could be met by an assess-

ment on the Banks, corresponding to the average amount of their note-circulation from year to year.

(2.) In connection with the issue of Bank notes generally, and specially with the authorised issue of the City of Glasgow Bank, amounting to £72,921, now of course suspended, I think it right to call attention to an unfortunate feature of the winding-up of the Western Bank, which is referred to by Mr. Somers, as follows :—'The Western 'Bank enjoyed, under the Act of 1845, an 'authorised ''issue' of notes to the amount of £337,938. This 'authorised issue, founded not on privilege, but on the 'free attainment of the Bank in circulation prior to 1845, 'was an asset of the Bank, and had an amalgamation with 'any other Scotch Bank been effected in 1857, when the 'difficulties were first manifested, it would have been 'treated as an asset, and have had a value in the balance-'sheet. It occurred to the liquidators and to the share-'holders, who had successfully paid every debt of the 'Bank, that this asset remained as valid as it had been; 'and whether for the purpose of sale to one or more of 'the Banks of issue in Scotland, or for the purpose of 'resuming the business of the Bank under the abundantly 'established solvency of its proprietary, it could be operated 'upon as rightly and justly as at any former period. But 'successive Governments, and the Imperial Parliament 'itself, before which a Bill to this end was brought in 'the session of 1864, gave an emphatic negative to this 'simple and reasonable proposition. The answer given 'by 'My Lords,' that 'they could not separate the general ''body of the shareholders from the Directors under ''whose management the troubles of the Bank had ''occurred,' was singularly narrow, mal-appropriate, and

'inconclusive; because the right of issue in question was 'claimed in behoof of shareholders who, at their own cost, 'had retrieved the Bank from all errors and consequences 'of management, whatever they had been, and was also a 'part indeed, under the Act of 1845, of the national 'right of Scotland. But the absoluteness of the 'cur-''rency theory' of 1844, even after this lapse of time, 'continued to possess both Government and Legislature 'with a bigotry impervious alike to considerations of justice 'or mercy; and the shareholders of the Western Bank, 'who had to sustain so many disappointments in their 'assets, had also to endure, on the same side of their 'affairs, a petty and profitless theft on the part of the 'State.'[1]

I cannot suppose, now that we are engaged in raising a *national* Fund for the relief of the shareholders of the City of Glasgow Bank, that the Legislature would repeat, in its case, the error which Mr. Somers thus criticises so severely. The right of issue which the latter Bank enjoyed, without requiring to keep coin to an equivalent amount, was only £72,921, but that sum at 3 per cent interest represents an annual profit of £2187, which if the right of issue were sold at twenty years' purchase, would bring £43,740, thereby increasing the assets of the Bank and relieving its unfortunate shareholders to that amount. To attain this object, I would therefore suggest a clause in the proposed Act authorising the Liquidators of the Bank to sell and transfer its authorised issue to all or any of the other Scotch Banks, in such lots and at such prices as to the Liquidators may seem fit. A similar arrangement might be made in regard to the Note Issue of £42,000,

[1] Somers, p. 145.

which belonged to the Bank of Mona, amalgamated with the City of Glasgow Bank.

(3.) It is not to be expected that the Scotch Banks, which date their origin at periods ranging from 1695 to 1838, and the youngest of which has thus undergone what is known among lawyers as 'the long prescription,' would contemplate with equanimity the idea of changing their names by the modern addition of the word 'Limited' as required by the Companies' Clauses Act, 1862, in the case of an existing company registering with 'limited liability.'

I venture to hope that, having regard to the antiquity of the Banks, to the fact that some of them are supposed to enjoy limited liability already, and to the importance as a matter of public policy of encouraging *all* the Scotch Banks to avail themselves of the provisions of the Companies' Acts for the purpose of limiting the liability of their shareholders, and so avoiding any repetition of the calamities of 1857 and 1878, there would be no objection on the part of the Legislature to suspend for a short time the provisions of the Companies' Acts requiring this objectionable change of name. If all the Scotch Banks were to register with limited liability, and it were stipulated by the Act that the provisions as to name[1] should be operative as regards all their places of business out of Scotland (in the same way as Her Majesty is Queen in England, and Empress in India only), I cannot see that any practical difficulty need be felt in conceding to them the privilege, if all register within say two years, of dispensing *in Scotland* with the addition of the word 'Limited' to their respective names. It would then be known by the public that *all* Scotch Banks were limited; and if the Act were to provide

[1] Sec. 41, Appendix, p. 159.

that the liability of the shareholders of all the Scotch Banks should extend to at least one-half more than the paid-up stock or shares held by them respectively, without prejudice to any larger liability under their respective regulations, it would form part of the public statutory law of the kingdom that all Bank shareholders in Scotland (as in the case of the Bank of Scotland and perhaps also the Royal Bank now) were liable to the creditors of the Bank in *at least* one-half more than the capital of the respective Banks paid up for the time being, and that as regards the notes issued by the Banks the liability of the shareholders was unlimited. If doubts or disabilities affect any of the Banks in the adoption of the course suggested, these might also be removed by the same Act.

It might be desirable, if such a Bill were to be introduced, that, in order to remove any possible hesitation on the part of the Legislature in passing it, its enactments should be conditional not only on all the Joint-Stock Banks for the time carrying on business in Scotland registering within two years as companies limited by shares, but on the liability of the Directors for the time being remaining unlimited, subject to the provisos of the Companies' Act 1867.

If the Legislature is to be appealed to at all I would take leave, in concluding this branch of my subject, merely to suggest that the necessary Bill ought to be introduced while the calamities, which it would be its object to mitigate now and to prevent in future, are fresh in the recollection of Parliament.

I have heard it suggested that we should delay action until we are sate upon by a Parliamentary Committee. Such a course, it humbly appears to me, would not be

worthy of a nation conscious of honour untarnished and with energy unabated. The secret system of banking, so characteristic of the old-fashioned Scottish gentleman, has furnished the cloak for a gigantic fraud to two or three Bank Directors, who, in their race for riches, had developed into swindlers. The nation has shown itself swift in bringing justice to the offenders and help to the sufferers. Our Banks, which have long held the foremost place among the representative institutions of the country, possess as fully as ever the confidence of the people; and they may rely on the aid of Government and Parliament if, laying aside all petty distinctions among themselves, they adopt unanimously of their own accord the more open system which, under the Companies' Acts, will form our best security against the recurrence of such a catastrophe.

5. *Is it possible to afford any Relief to Shareholders in the meantime?*

If the policy of limited liability which I have thus endeavoured to sketch out shall be favourably entertained by those in the management and direction of our Banks, I hope the effect may be to relieve to some extent, and almost immediately, the depression which the events of the last few weeks have produced not only on Bank stocks but upon the minds of the shareholders.

It is somewhat remarkable that, considering the risks of banking and the unlimited liability entailed by the ownership of stock of at least the great majority of our Scotch Banks, Bank stocks should have stood so high in public estimation as an investment. Apart from the popular idea expressed in the phrase 'As safe as the Bank,' which must now be regarded by so many as a cruel fallacy,

they did not promise the high immediate return which forms the great temptation to a certain class of investors. As a general rule I should say that the average return afforded by Bank stocks generally has seldom of late reached at the time of purchase five per cent interest on the price paid for the stock. But this of itself was a recommendation to the class of prudent permanent investors, who look with suspicion on any abnormally high rate of dividend or interest. What such investors knew, and were chiefly attracted by, may be called, to use a modern phrase, 'the 'unearned increment.' That, as a general rule, the stocks of our Scotch Banks have risen steadily and greatly in value may be gathered from the prices of the stocks of the seven larger Banks (of which alone I possess the statistics) in the following years:—

NAME OF BANK.	Prices of Stock per £100 paid-up Capital.			
	1860.	1871.	1872.	1878, Oct. 1.
	£	£	£	£
1. Bank of Scotland . .	200	269	286	327
2. Royal Bank . . .	145	184	192	236
3. British Linen Bank .	214	266½	276½	312
4. Commercial Bank . .	220	287	289	326
5. National Bank . .	180	281	299¾	327
6. Union Bank . . .	171	248	280	274½
7. Clydesdale Bank . .	137½	225	257½	278
Average prices per cent .	181 1/14	251½	268 19/28	297 3/14

It so happens, therefore, that the stocks of our Scotch Banks have, as a rule, been held not by speculators but by family trustees, ladies of independent means, our landed gentry, and the highest classes of our professional and mercantile men. To the latter the privilege sometimes

accorded by the Banks of allowing their shareholders to draw on the security of their shares,—thus saving them the necessity of giving security for their overdrafts by means of bills or cash-credit bonds,—has tended unquestionably to raise Bank Stock in their estimation as an investment.

It need not, therefore, be matter for surprise that the recent disclosure of the utter rottenness of one of our great Banks has filled with consternation the minds of the highly prudent and respectable classes by whom Bank stocks are held. Apart from the ruin which has fallen on many of the same class and on their friends by the failure of the City of Glasgow Bank, the mere fact, thus painfully forced on their minds, that the ownership of stock of most, if not all, of the Scotch Banks entails unlimited liability, which, if the other Banks were to follow the precedents of the Western and City of Glasgow, would involve their shareholders and their families in ruin, has impressed most Bank shareholders with feelings of deep anxiety. I know also from experience that the question whether it is *right*, under any circumstances, to incur a liability, the amount of which one cannot measure, has occurred to some minds among the shareholders, which, from a high sense of honour, are moved more by considerations of moral rectitude than by dread of personal pecuniary loss.

This anxiety and dissatisfaction has, in many cases, induced Bank shareholders to resolve on getting rid of their stock at any sacrifice, and unless some relief is administered serious pecuniary losses must result. The exchange of shareholders made under such circumstances adds neither to the strength nor to the respectability of the Banks. The speculator who hails the panic and anxiety of the

public as the opportunity for his own aggrandisement is not, as a general rule, an acquisition to any body of shareholders; and it is unnecessary to enter here upon the peculiarities of motives and conduct which render him a source of weakness rather than of strength.

To the great body of Bank shareholders—numbering upwards of 14,000, and representing in much larger proportions the wealth and respectability of the country—I venture respectfully to say, 'PAUSE.' Do not, by forcing your shares on a depressed market, subject yourselves and your families to large immediate loss, for the sake of escaping a liability, which, I thoroughly believe, is in the case of all our Banks more nominal than real. If, under misconceptions of any kind, you have become the owners of Bank stock, remember that it was partly on your credit that the Bank transacted its business, and that, as such institutions have hitherto been managed in Scotland, you are morally as well as legally responsible for such losses, if any, as the Bank may have incurred. Consider whether, in these circumstances, it is morally right, from a fear of such responsibility incurred by yourselves, to endeavour by selling your shares to throw it on other people. The high moral attitude which the unfortunate shareholders of the City of Glasgow Bank exhibited at their late meeting has won admiration everywhere. Do not exhibit to the world the spectacle of the shareholders of the other Banks trying, under the domination of a groundless panic, to shake off their responsibilities upon the shoulders of their neighbours. If, as you well may, you feel uneasy under the unlimited and unknown liability which you realise now as you never did before, is the remedy of right-thinking men not to use their influence as shareholders—

(1) in ascertaining whether any loss has been incurred by the Bank, for which, as partners, they are partly responsible; and (2) to endeavour to induce the Bank to adopt the provisions of the Companies' Acts, under which its shareholders will obtain a limit to their liability, and, by a thorough annual audit of the Bank's books, and a frank and clear statement of its position, the Bank will command from its shareholders and the public the confidence to which it is entitled, and nothing more?

But, unfortunately, there are many holders of Bank stock who must realise it in order to meet their liabilities. It was to provide a fair purchaser for Bank stock forced upon the market by persons so well entitled to our sympathy, that I suggested the formation of 'The Scottish 'Banking Investment Company (Limited),' the draft Prospectus of which has been already referred to. If such a Company, or a small Company or Association in connection with each Bank, is required to meet a public want, and has within it the elements of commercial success, it will no doubt be taken up.

The desire to suggest some practical measure of relief for Bank shareholders overwhelmed by the weight of unlimited liability, has taken such a hold upon my mind, that, at the busiest season of the year, I have devoted such time as I could spare, without neglecting the duties of my profession, to the preparation of these Notes. I submit them for the consideration of Bank shareholders and the public, fully conscious of their many imperfections, but equally confident that these will be treated with the leniency which the necessarily hurried preparation of my Notes will suggest to the indulgent reader.

IV.—Conclusion.

The general object of the suggestions I have made is well expressed in the verse of the old Roman poet and man of the world, translated for us by the Christian bard of Olney, which I have selected as the motto for my title-page. That hindrances of a very serious kind do now obstruct the way of our Scotch Banks is but too evident. To place themselves voluntarily under audit for the satisfaction of the public will require some magnanimity on their part; but nothing, I believe, would do more to restore confidence to the financial world than that these National Institutions should so allow their strength to be seen.

If that were followed by the registration of all our Banks as Companies limited by shares, this country could never again be visited by such widespread calamity as has followed its great Bank failures. The effect of reporting the future Balance-Sheets of our Banks in greater detail, and of submitting their accounts to an annual audit, would be to promote public confidence, and to check the system of large artificial credits to inflated houses which caused the ruin of the Western and City of Glasgow Banks, and has done so much to foster unsound trading. The Banks, under such a system, would regain all the confidence and credit they have lost; Bank Stocks, relieved of the *incubus* of unlimited liability which has so greatly reduced their price, would become more valuable than ever; and when the tide of prosperity again begins to flow, our Banks would be able to enforce upon the merchant the lesson which they alone can practically teach:—

> "If fortune fill thy sail
> With more than a propitious gale,
> Take half thy canvas in."

POSTSCRIPT TO SECOND EDITION.

In preparing the Second Edition of these Notes, which has now been called for, I have not thought it necessary to make any alterations on the text. But since I sent them to the press on 20th November 1878 the subject has received many illustrations. Its most important practical illustration is the suspension of the Caledonian Bank, which took place on 4th December last. The circular issued the following day to the Shareholders by the Chairman, Mr. Waterston, on behalf of the Directors, contained the following explanation regarding the Liquidation they had agreed to:—'It has been caused 'by the uneasy feeling which the indefiniteness of the claims of the City of 'Glasgow Bank upon this Bank created among the Depositors, and prin-'cipally and immediately by the panic among the Shareholders having led 'to action on the part of the Liquidators of the City of Glasgow Bank. 'Had all the Shareholders stood loyally by this Bank, the business might 'have been continued until the Liquidators of the City of Glasgow Bank 'had so far proceeded as that the claim against this Bank might have been 'estimated and compromised. The timid Shareholders who, impelled by 'panic, have endeavoured to save themselves at the expense of others, are 'thus in a great measure responsible for the result.'

This may explain the *result*, and the recurrence of similar results may require to be provided against—either by conferring on Directors an unlimited power of closing the transfer books, subject to an appeal by any aggrieved Shareholder to the Board of Trade, or by prohibiting transfers except with the consent of the Shareholders at their General Meetings, according to the Swedish law, as suggested by Mr. Palgrave. But the *cause* of the catastrophe which has brought to ruin (still, I hope, retrievable) a Bank so useful as the Caledonian is simply that, in an evil moment, the Directors were induced to take over, by way of security from a customer, four shares of the City of Glasgow Bank, which the Caledonian Bank continued to hold without any intimation to its Shareholders of the unlimited liability in which they were thereby involved. 'There is a conviction 'spreading,' as expressed by the *Edinburgh Courant* in a recent leader, 'that 'this has given the *coup de grace* to unlimited liability.'

The illustrations which my subject has received in Court and in the Press are too numerous to be even referred to; but I may be permitted to cite, in confirmation of the opinion which I ventured to express regarding the limited liability of our three oldest Banks, the *obiter dicta* of the Lord President and Lord Deas in deciding what is known, in the heavy roll of litigation to which the City of Glasgow Bank failure has given rise, as the Trustees' Test Case. As regards the necessity of limiting the liability of Bank Shareholders, the *consensus* of opinion has been, to my mind, quite wonderful; and I could not even enumerate, in the space at my disposal, the testimonies in its favour which have been given by the public press, especially in England. But, as full of interest and instruction on this and the other questions of Banking now agitating the public mind, reference may be made to the article in the December number of the *Fortnightly*

Review, and the articles in the *Economist*, republished the other day by Mr. Palgrave.

Some writers advocate the enforcement of limited liability by legislation; and in the direction of Bank audits legislation may be said to have begun, Dr. Cameron having given notice of his intention to introduce a Bill upon the subject, and a Bill by Mr. D. M'Laren applicable to our Scotch Banks having been read a first time. From other quarters ill-advised efforts are being made to introduce free trade in banking by abrogating the monopoly of note-issue enjoyed by our Scotch Banks.

With all due deference to those who are moving in these directions, I concur heartily with the *Scotsman* in deprecating anything like panic legislation on matters so important.

My object in publishing the foregoing Notes was, in the first place, to dispel as far as I could the ignorance which is the parent of panic, by giving a full and fair explanation of the position of our Scotch Banks; and, in the second place, to assist in preparing the public mind for the limited liability, which I am convinced is their true policy. The almost universal approval with which the idea of limiting the liability of Bank Shareholders has been received by the public, appears to me to have paved the way for its practical consideration by our Bank Managers and Directors; and the failure of their efforts to restore the prices of Bank Stocks by the more detailed balance-sheets and the special Reports which some of the Banks have issued, ought to satisfy them that, in justice to their Shareholders,* a more radical reform is required.

It is the interest both of the Banks and the Public that the reforms of the system under which Bank Shareholders have been the most serious sufferers should be proposed by the Banks themselves; and I am unable to suggest any more practical and satisfactory method of restoring public confidence and arriving at sound opinions, than a conference of Bank Managers and professional Auditors to be named by the Shareholders or Directors, followed by an audit of each Bank, and the preparation of a model balance-sheet, and of the regulations to be adopted by the Banks on their registration as Companies limited by shares.

Such registration will form the best security for thorough audits and satisfactory balance-sheets. These, when depositors are no longer encouraged to a blind trust by the unlimited liability of the Shareholders, will be eagerly scanned and discussed by the public; and the Bank which, by its careful and open management, shows itself most deserving of confidence, will attract the most deposits.

* Of the hardship to which the present system sometimes exposes people against their will my own experience enables me to furnish an example. Within the last few days a client of mine has died, leaving a few shares of an unlimited Chartered Bank, and a Will, of which, along with two others who have declined to act, I am an executor. Although confident of the soundness of all our Banks, I object on principle to incurring unlimited liability; but I cannot discharge my duty to my deceased client without becoming, as her executor, a partner of this Bank, which, not being registered under the Companies' Act, 1862, affords no opportunity to the representatives of deceased Shareholders to realise their stock without themselves incurring the unlimited liability of Shareholders.

It is satisfactory to learn, when the public mind is so much exercised on the subject of our Banks, that a Banking and Insurance Magazine is about to be started in Scotland. Of its promoters I know not even the names; but an able and independent journal, criticising fully and freely all matters of interest affecting our Banks and Insurance and Investment Companies, would be an additional safeguard of a most salutary kind for the financial interests of the country.

EDINBURGH, *6th January* 1879.

APPENDIX.

I.—EXTRACTS from ACT of PARLIAMENT and ROYAL CHARTERS, Incorporating respectively the BANK of SCOTLAND and the ROYAL and BRITISH LINEN COMPANY BANKS.

1. ACT OF PARLIAMENT for Erecting the BANK OF SCOTLAND, 5 Gul. III. Part I. Sess. 5. Edinburgh, July 17, 1695.

Our Sovereign Lord, considering how useful a public bank may be in this kingdom, according to the custom of other kingdoms and states; and that the same can only be best set forth and managed by persons in company with a joint stock, sufficiently indued with these powers, and authorities and liberties necessary and usual in such cases; hath therefore allowed, and with the advice and consent of the estates of Parliament, allows a joint stock, amounting to the sum of *Twelve hundred thousand pounds money* to be raised by the company hereby established, for the carrying and managing of a public bank . . . . Likeas each and every person at the time of his subscribing shall pay into the hands of the forenamed persons, or any three of them, ten of the hundred of the sums set down in their respective subscriptions towards the carrying on the bank; and all and every persons subscribing and paying in to the said stock as aforesaid, shall be, and are hereby declared to be one body corporate and politic by the name of The Governor and Company of the Bank of Scotland; under which name they shall have perpetual succession and shall have a common seal; and their successors, by the name foresaid, shall be able and capable to purchase and enjoy, as also to give, grant, alienate, and dispose of lands, tenements, and all other heritage; as likewise of all sums of money, and other moveable goods and

gear whatsomever: And further, to do and execute all other things which any other company or body corporate can or may lawfully do or execute, and that as amply and fully as if the several matters and things were particularly set down in this Act . . . . and the saids adventurers, at any general meeting that shall happen to be appointed, shall have power to require the payment of any further part of the subscriptions than the ten per cent above mentioned at such time as they shall think fit . . . And it is hereby further *statute*, that no dividend shall be made, save out of the interest or product arising out of the joint stock, and by the consent of the adventurers in a general meeting . . . PROVIDING ALWISE, as it is hereby expressly enacted, provided, and declared, that it shall not be lawful nor allowable for the said company, governor, deputy-governor, directors, or managers thereof, upon any ground or pretence whatsomever, directly or indirectly to use, exercise, or follow any other commerce, traffic, or trade with the joint stock to be employed in the said bank, or any part thereof, or profits arising therefrae, excepting the trade of lending and borrowing money upon interest and negociating bills of exchange allenarly, and no other: PROVIDING ALSO, likeas it is hereby expressly provided, enacted, and declared, that in case the governor, deputy-governor, directors, or other managers of the said company, shall at any time happen to purchase for the use and behoof of the said company, any lands, rents, or other heritage belonging to his Majesty, his heirs and successors, or shall advance or lend to his Majesty, his heirs or successors, any sums of money in borrowing or by way of anticipation upon any part, branch, or fund of the ordinary rent or casualties of the crown, or of any supply, cess, excise, custom, pole-tax, or any other supply or taxation already granted, or which shall happen to be granted at any time hereafter to his Majesty and his foresaids, any manner of way whatsoever, excepting these parts, branches, or funds of the saids rents, casualties, or impositions foresaids, upon which a credit of loan shall happen to be granted by Act of Parliament allenarly; then and in that case the said governor, deputy-

governor, directors, or other managers, ane or moe, of the said company, who shall consent, agree to or approve of the said purchase, advance or lending to his Majesty and his foresaids, and ilk ane of them so agreeing and approving, and being found guilty thereof according to law, shall be liable for every such fault in the triple of the value of the purchase so made or the sums so lent, whereof an fifth part shall belong to the informer, and the remainder to be disposed of towards such public uses as shall be appointed by Parliament, and not otherwise: AND it is likewise hereby PROVIDED, that all foreigners who shall join as partners of this Bank shall thereby be and become naturalized Scotsmen to all intents and purposes whatsoever.

2. ROYAL CHARTER, Erecting the ROYAL BANK OF SCOTLAND, dated 31st May 1727.

And his Majesty doth hereby further, for himself, his heirs and successors, give full power to all and every the said members, qualified as aforesaid, in their general courts or assemblies, from time to time by majority of votes, as aforesaid, to make such calls upon all and every the proprietors of the capital stock of the said Corporation hereby erected, as to the majority of such members, so qualified as aforesaid, in their general courts shall seem proper; so as such calls so to be made don't in the whole exceed £50 upon every £100 of the subscribed capital of the said stock, and so as not above £10 upon every £100 of the said subscribed capital of the said stock be called at one time; and that such calls, so to be made as aforesaid, shall be paid in by the respective proprietors within the time or times so to be limited, by the order of such general court for that purpose, as aforesaid; and that no person or persons who shall refuse or neglect to pay in such calls at the time or times for that purpose limited, shall be allowed to transfer or part with any share they respectively have in the said stock, nor receive any dividends or profits on account thereof, till such calls shall be by them respectively paid; and that all and every person or persons refusing or neglecting to

pay the said call or calls, shall, from and after the respective times such calls ought to have been paid, be charged and chargeable with interest for such calls, till the same are respectively paid; and that it shall and may be lawful to and for the said governor, deputy-governor, and court of directors, or the majority of them so present, to detain all such dividends and profits as such person or persons so neglecting or refusing to pay their calls would otherwise be entitled to, and apply the same for and towards payment of the said calls which should have been respectively paid by them, with interest from such times as the same ought respectively to have been paid.

3. Original Charter of George II. Incorporating British Linen Company, dated 5th July 1746.

And we do hereby for us, our heirs and successors, give and grant unto the said Corporation hereby established, and their successors, full power and authority, at their general Courts, to raise a capital joint stock, not exceeding £100,000 sterling of lawful money of Great Britain, at such times and in such proportions as their general Courts shall direct, the said joint stock to be raised either by taking subscriptions from particular persons, being or not being members of the said Corporation, for advancing money for this purpose, according to the orders of such general Courts, or by calls of money from the members of the said Corporation for the time being, or by such other methods as the said general Courts shall think expedient for making up the said capital stock.

* * * * *

We will, moreover, and by these presents, for us, our heirs and successors, do grant to the said Corporation hereby established, that, in order to answer all just demands of the said Corporation, the general Court shall have power from time to time, as they shall see cause, to call in or direct to be paid from their respective members for the time being, proportionally according to their respective shares in the capital stock of the said Corporation, any sum of money as by such general

Courts shall be from time to time adjudged necessary to be called in or raised for the exigencies of the said Corporation, to be paid into such hands as they shall appoint for that purpose, so as such call do not at any one time exceed ten pounds for every hundred on the capital, and so as there be an interval of thirty days at least between every such call: And in case any member shall neglect to pay in his share of the money so called for at the time appointed for that purpose by notice in the *London Gazette*, and in the *Edinburgh Courant*, That then the said Corporation shall have full power and authority not only to stop the share, dividend, and profits which shall become payable to such member, and to apply the same towards payment of the money so called for, until the same be satisfied, but also to stop the transfers or assignments of the shares of every such defaulter, and to charge him with interest after the rate of five pounds for every hundred by the year for the money omitted to be paid, from the time appointed for the payment till the payment thereof: And we will, that the share and stock of such defaulter shall be liable to make good and answer the money appointed to be paid and the interest thereof as aforesaid: And in case the principal and interest shall be unpaid by the space of twelve months, that then the said Corporation shall be and are hereby empowered to authorise such person as they shall think fit, to sell, assign, and transfer so much of such defaulter's stock as will satisfy and pay the same, rendering the overplus, if any, to the proprietor: And we will, that the money so called for, and paid in, shall be deemed capital stock, and written in the books of the said Corporation; and that the members paying the same shall have credit for their proportions thereof: We will, nevertheless, that the said Corporation, in a general Court, from time to time, when they judge their affairs will admit thereof, may be at liberty to cause any sum of money so called in, or any part thereof, as also the profits which may from time to time arise from the carrying on of this undertaking, to be divided and distributed amongst the members of the said Company, according and in proportion to their respective shares in the capital stock, which We will shall be proportionally abated.

II.—Notes on Common Law of Joint-Stock Companies.

The Common Law of Scotland as regards Joint-Stock Companies has been fluctuating. Professor Bell, in his *Commentaries* (Maclaren's Edition, ii. p. 516), says:—"Joint-Stock Companies are established with the view 'of raising, by the contribution of small transferable shares vendible in 'the market, a great capital for the accomplishment of some extensive 'scheme of trade or manufacture, or the completion of some object of 'national or local importance. . . . It differs, in some essential particulars, 'from the ordinary partnership—1. By the credit raised with the public 'being placed entirely on the joint-stock of the Society, as indicated by 'a descriptive name. 2. By a difference in the management and operation 'of the Association, as conducted not by the personal co-operation of the 'shareholders as partners in trade, but by the discretion and prudence of 'Directors chosen by the Association, and made known to the public by 'advertisement or otherwise. And, 3. By the transferable nature of the 'shares. From all these result a credit entirely different in nature and 'object from that which belongs to private partnership, a reliance on the 'stock of the Company, a comparative disregard of the personal credit of 'the shareholders, an attention confined to the reality of the fund, and 'the good discretion of the management.

'The law of Scotland has recognised a distinction, grounded on these 'considerations, between the nature, character, and effects of such Associa-'tions, and those of private partnership; confining the responsibility of 'shareholders in such Companies to the extent of their shares. This 'great question was tried about the middle of the last century in the 'case of the Arran Fishing Company.' Mr. Maclaren, the learned editor, however adds—'The distinction suggested by Professor Bell, on the 'authority of this case, has never been accepted by the profession; and 'it may safely be asserted that many hundred thousand pounds have 'since been paid by the shareholders of joint-stock companies, on the 'footing of there being no limitation of their responsibility to creditors. 'The true principle is, that a trader cannot limit his responsibility for 'debts except by special stipulation with his creditor in each case. A 'general limitation of responsibility can only be conferred by incorpora-'tion under the authority of the Crown or of Parliament. The publication 'of the Charter or Act of Incorporation is equivalent to notice to the 'creditor of the terms on which the Company contracts, and any person 'who distrusts the security of the Company may refrain from dealing 'with it.'

The case referred to by Professor Bell was that of *Stevenson and Company* v. *M'Nair*, 1757, M. 14,667, 5 Br. Sup. 340, which is thus digested by Mr. Maclaren—'The Arran Fishing Company was an associa-'tion of about 40 persons, for the purpose of advancing the fishing trade 'at the mouth of the Clyde. The capital stock was £2000, subscribed 'in transferable shares of £50, no person to hold more than four shares.

'The trade was to be carried on by certain directors, whose orders were 'to bind the associates to the extent of their respective subscriptions; 'and it being stipulated that the directors should have 'no power to 'compel any partner or subscriber to 'pay or contribute any more money '' to the stock than the sum by him subscribed.' Stevenson and Company, 'of the Ropework at Port-Glasgow, furnished to this Association ropes to 'the value of £72, and for this sum brought an action against M'Nair 'and others as members of the Company. The defence was—(1) That 'all the members of the Company were not called, nor the Directors as 'representing the Society. (2) That the remedy lay against the Company 'and the stock, the defenders not being liable in their private fortunes. 'There appear to have been two judgments pronounced—one on 14th 'November 1757, which assoilzied the defenders, in respect all parties 'having interest were not called into the field, and this only is reported 'in the Faculty Collection of the above date (see M. 14,560); another 'decision on 14th December 1757, establishing the distinction between 'this case and private partnership, and holding the action to be groundless 'as against the partners on the footing of personal responsibility beyond 'the shares. The judgment, as reported by Lord Kilkerran, 'found that '' the parties are not liable beyond their subscriptions, and that the action '' has not been properly brought, and remit to the Lord Ordinary to '' proceed accordingly.''

Some of the pleadings and *dicta* of the Judges in this case are curious and interesting. The defenders (Morrison, 14,561) maintained, 'Such 'Societies are well known in trading nations, and in them it was never 'dreamed that the private funds of the partners could be attached for the 'debts of the Company. The French are best acquainted with it, and 'have derived the greatest advantage from partnerships of this kind of 'any nation in Europe. Savary, in his *Parfait Negociant, seconde partie*, 'l. i. c. 1, in giving an account of them, called by him *Societez en Com-'mandites*, says, p. 24, 'Les marchands, et autres personnes qui feront '' des Societez en Commandites, doivent bien prendre garde de mettre '' toujours cette clause dans l'acte, Qu'ils ne seront tenus à aucune dette '' de la société; et qu'en cas de perte, ils ne pourront perdre que jus-'' ques à la concurrence des sommes qu'ils y auront mises.''

Again (Morrison, 14,667), the Lords, in recalling the interlocutor of the Lord Ordinary, who had found the defenders liable, conjunctly and severally, are reported to have said:—'The very meaning of confining 'the trade to a joint stock is, that each should be liable for what he 'subscribes, and no farther. This is the very reason why joint proprietors 'of ships are never subjected beyond the value of the ship. With respect 'to equity, Grotius justly observes, l. ii. cap. 11, sec. 13, that it is not 'expedient to make partners farther liable, because it would deter every 'one from entering into a trading company. To show the inexpediency, 'and even the absurdity, of making each partner liable for the whole 'debts of a company having a joint stock, consider only the Whale 'Fishing Company, composed of a vast number of partners, for the sub-'scription of £35 each. According to the interlocutor pronounced by 'the Lord Ordinary, any one partner, loaded with the whole debts of the 'company, might be crushed to atoms in a moment.'

III.—Comparative Estimate of Value of Scotch Bank Stocks as at 1st October and 20th November 1878.

NAME OF BANK.	Paid-up Stock.	Estimated Value, 1st Oct. 1878.		Estimated Value, 20th Nov. 1878.		Fall in Value in Seven Weeks.
		Price per cent.	Value.	Price per cent.	Value.	
	£	£	£	£	£	£
Bank of Scotland . . .	1,250,000	327	4,087,500	280	3,500,000	587,500
Royal Bank	2,000,000	236	4,720,000	200	4,000,000	720,000
British Linen Bank . . .	1,000,000	312	3,120,000	265	2,650,000	470,000
Commercial Bank . . .	1,000,000	326	3,260,000	250	2,500,000	760,000
National Bank	1,000,000	327	3,270,000	270	2,700,000	570,000
Aberdeen Town & County Bank [1]	252,000	312½	787,500	261½	658,980	128,520
Union Bank	1,000,000	274½	2,745,000	187½	1,875,000	870,000
North of Scotland Bank [1] . .	394,500	337½	1,331,437	250	986,250	345,187
Clydesdale Bank . . .	1,000,000	278	2,780,000	185	1,850,000	930,000
Caledonian Bank [2] . . .	150,000	297½	446,250	120	185,000	261,250
Totals . .	9,046,500	293·46 Average.	26,547,687	231·08 Average.	20,905,230	5,642,457

[1] The Capital of the Aberdeen Town and County and North of Scotland Banks is in £20 shares with £7 and £4 respectively paid up, but, for facility of comparison, it is here converted into Stock.

[2] The Capital of the Caledonian Bank is in £10 shares with £2 : 10s. paid up, but for the same reason it is here converted into Stock.

IV.—STATISTICS OF THE SCOTCH BANKS.

When Estabd.	NAME.	No. of Partners.	Date of Balance.	Number of Offices.	Authorised Circulation.	Capital.		Reserve Funds.	Deposits.	Notes in Circulation.	Drafts and Acceptances.†	Net Profits.	Dividend and Bonus.	Deficit.	Market Price of Stock, 1st Oct. 1878.
						Subscribed.	Paid up.								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
					£	£	£	£	£	£	£	£	%	£	£
1695	Bank of Scotland . . .	1,618	28th Feb. 1878	95	343,418	1,875,000	1,250,000	750,000	10,508,832	603,705	2,362,535	183,326	14	...	327
1727	Royal Bank of Scotland . .	1,595	21st Sept. 1877	109	216,451	2,000,000	2,000,000	500,000*	10,549,326	738,941	604,207	195,170	9½	...	236
1746	British Linen Company Bank .	1,265	15th April 1878	80	438,024	1,000,000	1,000,000	411,740	7,455,902	552,363	562,580	160,199	14	...	312
1810	Commercial Bank of Scotland .	1,352	31st Oct. 1877	107	374,880	3,000,000	1,000,000	416,544	9,197,794	839,759	445,890	157,787	15	...	326
1825	National Bank of Scotland .	1,776	1st Nov. 1877	94	297,024	5,000,000	1,000,000	500,000	11,057,840	659,986	1,687,314	189,115	15	...	327
1825	Aberdeen Town and County Bank	1,012	31st Jan. 1878	52	70,133	720,000	252,000	126,000	1,804,084	210,959	...	37,286	13¾	...	312½
1830	Union Bank of Scotland . .	1,352	2d April 1878	120	454,346	1,000,000	1,000,000	315,000	8,958,567	791,072	396,971	146,446	13	...	274½
1836	North of Scotland Banking Coy.	1,999	30th Sept. 1878	58	154,319	1,972,500	394,500	203,441	2,539,544	366,477	...	54,066	12½	...	337½
1838	Clydesdale Banking Coy. . .	1,493	31st Dec. 1877	86	274,321	1,000,000	1,000,000	500,000	6,625,116	646,441	627,860	142,168	14	...	278
1838	Caledonian Banking Coy. . .	944	29th June 1878	24	53,434	600,000	150,000	75,000	1,146,040	123,164	...	22,681	14	...	297½
	Totals . .	14,406		825	2,676,350	20,167,500	9,046,500	3,797,725	69,843,045	5,532,867	6,687,357	1,288,244	13·04 Average.	...	293·46 Average.
1839	**City of Glasgow Bank . .**	**1249**	**5th June 1878**	**134**	**72,921‡**	**1,000,000**	**1,000,000**	**450,000**	**8,102,001**	**710,252**	**1,488,244**	**142,095**	**12**	...	**236**
	Do. do. . .	...	**1st Oct. 1878**	...	...	...	...	...	**8,798,788**	**863,403**	**2,742,105**	...	...	**5,190,983**	

* At 4th June 1878, the Reserve of this Bank was stated to be £710,000.

† It has been thought unnecessary to separate Drafts from Acceptances or to show debts due to the Banks, the object of this and the two following Tables being merely to illustrate the confidence shown by the public in unlimited and limited Banks respectively.

‡ Bank of Mona, £42,000 additional.

NOTE.—Some of the Banks had in hand at the dates of their respective balances their whole year's profits, so that, after deducting, in each case, a half-year's Dividend, there remained unappropriated funds as follows:—*British Linen Bank*, £501,940; *National*, £588,465; *Union*, £405,974; and *Clydesdale*, £577,209. The other Banks had paid *Interim* Dividends before the dates of their respective balances.

V.—STATISTICS OF FIFTEEN ENGLISH AND IRISH LIMITED BANKS.

When Estabd.	NAME.	Head Office.	No. of Partners.	Date of Balance.	Number of Branches.	CAPITAL.		Reserve Funds.	Liability beyond Amount Paid.	Deposits.	Notes in Circulation.	Drafts and Acceptances.	Net Profits for Half-Year.	Dividend and Bonus.	Price of Stock.
						Subscribed.	Paid up.								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
						£	£	£	%	£	£	£	£	%	%
1694	Bank of England . . .	London	...	31st Aug. 1878	10	14,553,000	14,553,000	3,022,818	...	24,065,312	27,069,015	257,026	689,594	9½	251
1783	Bank of Ireland . . .	Dublin	...	...	57	2,769,231	2,769,231	1,034,000	...	...	2,917,575	...	...	12	312½
1829	Cumberland Union Bank, Limited	Carlisle	930	31st Dec. 1877	20	540,000	225,000	85,000	140	1,780,337	35,295	...	*46,649	18	360
1836	Union Bk. of Manchester, Limited	Manchester	488	30th June 1878	27	1,000,000	440,000	160,000	127	1,563,773	...	65,435	*58,420	12	186
1861	Birmingham Joint-Stock Bk., Ltd.	Birmingham	565	31st Dec. 1877	2	2,950,000	295,000	401,496	900	1,687,425	...	...	*52,099	20	340
1862	Alliance Bank, Limited . .	London	1400	30th June 1878	...	2,000,000	800,000	185,000	150	2,271,851	...	774,191	28,465	6	100
„	Imperial Bank, Limited . .	Do.	700	„ „	2	2,250,000	675,000	100,000	233	2,434,714	...	289,590	24,557	6	106½
„	London and South-Western Bank, Limited.	Do.	900	„ „	36	1,000,000	200,000	30,000	400	1,576,429	...	2,326	9,547	8	137½
„	Manchester and County Bk., Ltd.	Manchester	850	„ „	32	4,400,000	660,000	415,000	566	4,542,907	...	...	66,372	15	250
1863	Consolidated Bank, Limited .	London	1850	„ „	4	2,000,000	800,000	155,000	150	2,966,901	...	80,030	42,645	10	162
1864	Bradford Old Bank, Limited .	Bradford	388	31st Dec. 1877	9	1,061,400	424,560	102,520	150	1,787,111	...	...	33,271	15	312½
„	London and Provincial Bank, Ltd.	London	1200	30th June 1878	72	400,000	200,000	103,200	100	1,886,026	...	...	13,517	12½	220
„	Munster Bank, Limited . .	Cork	1645	29th June 1878	43	1,000,000	350,000	150,000	186	2,831,369	...	34,569	26,774	12	257
1865	Lloyd's Banking Company, Ltd. .	Birmingham	1279	31st Dec. 1877	42	2,500,000	400,000	220,000	525	5,524,912	...	...	*87,766	20	312½
„	Parr's Banking Company, Limited	Warrington	265	„ „	19	1,964,500	392,900	193,000	400	2,606,857	...	29,644	*81,201	17½	305
	Totals and Averages . .	...	12,460	...	375	40,388,131	23,184,691	6,357,034	74·20	57,525,924	30,021,885	1,532,811	1,260,877	10·48	248·73
	Deduct first two Banks .	...	...	...	67	17,322,231	17,322,231	4,056,818	...	24,065,312	29,986,590	257,026	689,594	...	...
	Totals, etc., excluding Banks of England and Ireland	...	12,460	...	308	23,065,900	5,862,460	2,300,216	293·47	33,460,612	35,295	1,275,785	571,283	12·19	212·99

* For Year.

VI.—STATISTICS OF THIRTEEN AUSTRALASIAN LIMITED BANKS.

When Estabd.	NAME.	Head Office.	No. of Partners.	Date of Balance.	No. of Branches.	CAPITAL.		Reserve Funds.	Liability beyond Amount paid.	Deposits.	Notes in Circulation.	Bills payable and other Liabilities.	Net Profits for Half-Year.	Dividend and Bonus.	Price of Stock.
						Subscribed.	Paid up.								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
						£	£	£	%	£	£	£	£	%	%
1817	Bank of New South Wales .	Sydney	600	4th March 1878	150	1,000,000	1,000,000	450,000	100	8,709,881	736,719	2,007,740	98,141	17½	290
1834	Commercial Banking Co. of Sydney	Do.	539	31st Dec. 1877	78	500,000	500,000	475,000	100	4,493,311	380,361	2,642	89,119	25	392
1835	Bank of Australasia . . .	London	1530	15th Oct. 1877	75	1,200,000	1,200,000	255,710	100	5,176,099	330,139	1,228,017	*168,020	12½	210
1841	Bank of South Australia . .	Do.	680	31st Dec. 1877	23	625,000	625,000	200,000	100	1,710,900	102,291	185,780	35,304	12	188
1852	Bank of Victoria . . .	Melbourne	400	„ „	74	1,000,000	500,000	230,000	300	3,470,461	285,638	548,810	32,152	12	196
„	English, Scottish, and Australian Chartered Bank	London	760	30th June 1878	33	720,000	720,000	105,000	100	2,219,441	197,134	216,730	30,177	8	125
„	London Chartered Bk. of Australia	Do.	1393	31st Dec. 1877	23	1,000,000	1,000,000	120,000	100	1,971,945	149,471	395,708	*87,028	9	135
1853	Australian Joint Stock Bank .	Sydney	650	30th June 1878	64	625,000	500,000	135,000	150	2,573,483	271,148	505,405	38,760	12½	175
1858	National Bank of Australasia .	Melbourne	1681	31st March 1878	96	1,000,000	800,000	287,500	150	3,209,993	336,698	917,924	59,396	12½	200
1861	Bank of New Zealand . .	Auckland	1100	„ „	95	725,000	725,000	325,000	100	6,800,070	502,557	2,138,674	*82,567	15	235
1866	Commercial Bk. of Australia, Ltd.	Melbourne	900	30th June 1878	36	1,000,000	250,000	60,000	300	918,472	88,571	1,136	11,406	8	125
1872	National Bank of New Zealand, Ltd.	London	1464	31st March 1878	30	1,000,000	350,000	...	471	1,482,435	107,963	292,912	*21,048	6	100
„	Queensland National Bank, Ltd.	Brisbane	546	31st Dec. 1877	22	775,980	387,990	70,000	100	1,117,184	115,734	3,049	18,441	10	150
	Totals . . .		12,243		799	11,170,980	8,557,990	2,713,210	140·31 Average.	43,853,675	3,604,424	8,444,527	771,559	12·66 Average.	201·07 Average.

NOTE.—The liability of most of the above Banks beyond their paid-up capital is regulated by the Acts or Charters under which they are respectively incorporated.

Deduct to equalise half-year's Profits . . .	138,048
	633,511
Doubling, say for year	1,267,022

* For Year.

VII.—Extracts from The Companies' Acts 1862 and 1867, so far as bearing on the Registration of Existing Joint-Stock Banks as Companies limited by Shares.

1. The Companies' Act 1862, 25 and 26 Vict. cap. 89.

Liability of Members.

38. In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):— Liability of present and past members of Company.

1. No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up:
2. No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member:
3. No past member shall be liable to contribute to the assets of the company unless it appears to the court, that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:
4. In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

* * * * * *

Provisions for Protection of Creditors.

Publication of name by a limited Company.

41. Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices, advertisements, and other official publications of such Company, and in all bills of exchange, promissory-notes, indorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts, and letters of credit of the Company.

* * * * * *

Certain companies to publish statement entered in Schedule.

44. Every limited banking company and every insurance company, and deposit, provident, or benefit society under this Act shall, before it commences business, and also on the first *Monday* in *February* and the first *Monday* in *August* in every year during which it carries on business, make a statement in the Form marked D in the First Schedule hereto, or as near thereto as circumstances will admit, and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on, and if default is made in compliance with the provisions of this section, the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorize or permit such default shall incur the like penalty.

FORM D.

FORM OF STATEMENT referred to in Part III. of the Act.

* The capital of the company is , divided into shares of each.

* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were—

Debts owing to sundry persons by the company:

On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

The assets of the company on that day were—

Government securities [*stating them*], £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

Provisions for Protection of Members.

Power to alter regulations by special resolution.

50. Subject to the provisions of this Act, and to the conditions contained in the Memorandum of Association, any company formed under this Act may, in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the company contained in the Articles of Association, or in the Table marked A in the First Schedule, where such Table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company; and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the Articles of Association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Note.—Table A contains the Statutory "Regulations for management of a company limited by Shares." They will not apply

to an existing company registered under the Act, unless adopted by Special Resolution of the company; but, as indicating the nature of the Regulations which a company registering may be expected to adopt, the following are given as the Statutory Regulations for a company under the head of

Audit.

83. Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

84. The first auditors shall be appointed by the directors. Subsequent auditors shall be appointed by the company in general meeting.

85. If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

86. The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office.

87. The election of auditors shall be made by the company at their ordinary meeting in each year.

88. The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting.

89. Any auditor shall be re-eligible on his quitting office.

90. If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

91. If no election of auditors is made in manner aforesaid, the Board of Trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services.

92. Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

93. Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company.

94. The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Companies authorised to Register under this Act.

Regulations as to registration of existing companies.

179. The following regulations shall be observed with respect to the registration of companies under this part of this Act (that is to say):—

1. No company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint stock company as hereinafter defined, shall register under this Act in pursuance of this part thereof:

* * * * *

3. No company that is not a joint stock company as hereinafter defined shall in pursuance of this part of this Act register under this Act as a company limited by shares:

4. No company shall register under this Act in pursuance of this part thereof unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose:

5. Where a company not having the liability of its members limited by Acts of Parliament or letters patent is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:

* * * * * *

In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Companies capable of being registered.

180. With the above exceptions, and subject to the foregoing regulations, every company existing at the time of the commencement of this Act, including any company registered under the said Joint Stock Companies' Acts, consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

Definition of joint stock company.

181. For the purposes of this part of this Act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint stock company shall be deemed to be a company having a permanent paid up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares.

Proviso as to banking company.

182. No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company.

Requisitions for registration by companies.

183. Previously to the registration in pursuance of this part of this Act of any joint stock company there shall be

delivered to the Registrar the following documents (that is to say):—

1. A list showing the names, addresses, and occupations of all persons who, on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing in cases where such shares are numbered, each share by its number:
2. A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of copartnery, cost-book regulations, or other instrument constituting or regulating the company:
3. If any such joint stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say):—
   - The nominal capital of the company and the number of shares into which it is divided:
   - The number of shares taken and the amount paid on each share:
   - The name of the company, with the addition of the word "limited," as the last word thereof:

Power for existing company to register amount of stock instead of shares.

185. Where a joint stock company authorised to register under this Act has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the company, and the names of the persons who are holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statements of existing companies.

186. The lists of members and directors, and any other particulars relating to the company hereby required to be delivered

to the Registrar, shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the Act passed in the sixth year of the reign of his late Majesty King *William* the Fourth, chapter sixty-two.

On registration of banking company with limited liability notice to be given to customers.

188. Every banking company existing at the date of the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company, and such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post, addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company; and in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Power to company to change name.

190. Any company authorised by this part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited."

Certificate of registration of existing companies.

191. Upon compliance with the requisitions in this part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the Tables marked B and C in the First Schedule hereto, the Registrar shall certify under his hand that the company so applying for registration is incorporated as a company under this Act, and in the case of a limited company, that it is limited, and thereupon such

company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in *Scotland* so incorporated shall be deemed and taken to be a bank incorporated, constituted, or established by or under Act of Parliament.

Certificate to be evidence of compliance with Act.

192. A certificate of incorporation given at any time to any company registered in pursuance of this part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorized to be registered under this Act as a limited or unlimited company, as the case may be, and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act.

Transfer of property to company.

193. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations and things in action, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Registration under this Act not to affect obligations incurred previously to registration.

194. The registration in pursuance of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its rights to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such company previously to such registration.

Continuation of existing actions and suits.

195. All such actions, suits, and other legal proceedings as may at the time of registration of any company registered in pursuance of this part of this Act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless, execution shall not issue against the effects of any individual member of such company

upon any judgment, decree, or order, obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company.

Effect of registration under Act.

196. When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, cost-book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered Memorandum of Association and Articles of Association; and all the provisions of this Act shall apply to such company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say):—

1. That Table A in the First Schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this part thereof:
2. That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock company whose shares are not numbered:
3. That no company shall have power to alter any provision contained in any Act of Parliament relating to the company:
4. That no company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company:
5. That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply:
6. That nothing herein contained shall authorize any company to alter any such provisions contained in any deed of settlement, contract of copartnery, cost-book regulations, letters patent, or other instrument constituting or regulating the company, as would, if such company had originally been formed under this Act, have been contained in the Memorandum of Association, and are not authorized to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof, by virtue of any Act of Parliament, deed of settlement, contract of copartnery, letters patent, or other instrument constituting or regulating the company.

2. The Companies' Act, 1867, 30 and 31 Vict., cap. 150.

Preliminary.

Short Title.

1. This Act may be cited for all purposes as "The Companies' Act, 1867."

Act to be construed as one with 25 and 26 Vict. c. 89.

2. The Companies' Act, 1862, is hereinafter referred to as "The Principal Act;" and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as "The Companies' Acts, 1862 and 1867;" and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression "this Act" in the principal Act, and any expression referring to the principal Act, which occurs in any Act or other document, shall be construed to mean the principal Act as amended by this Act.

Commencement of Act.

3. This Act shall come into force on the first day of September, one thousand eight hundred and sixty-seven, which date is hereinafter referred to as the commencement of this Act.

Unlimited Liability of Directors.

Company may have directors with unlimited liability.

4. Where after the commencement of this Act a company is formed as a limited Company under the principal Act, the liability of the directors or managers of such company, or the managing director, may, if so provided by the memorandum of association, be unlimited.

Liability of directors, past and present, where liability is unlimited.

5. The following modifications shall be made in the thirty-eighth section of the principal Act, with respect to the contributions to be required in the event of the winding-up of a limited company under the principal Act, from any director or manager whose liability is, in pursuance of this Act, unlimited:—

1. Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were, at the date of the commencement of such winding-up, a member of an unlimited company.

2. No contribution required from any past director or manager, who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up, shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

3. No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

4. Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up.

REVIEW OF FIRST EDITION.

Economist, 7th Dec. 1878.

Our Scotch Banks, their Position and their Policy; being a Practical Plea for Limited Liability. By *William Mitchell, S.S.C.* Edinburgh: David Douglas. 1878.

THIS publication, as the first word in the title imports, was made in Scotland. It contains a careful, calm, we might almost say judicial examination, into the position of the Scotch banks, and urges with great force that they should combine to place their shareholders under the protection which limitation of liability would give them. The three senior banks of Scotland, viz. the Bank of Scotland, the Royal Bank of Scotland, and the British Linen Company, claim a limitation of liability "to the capital paid and the calls exigible under their respective Acts and charters." Some circumstances, among which the manner in which these banks are named in the Act of 1845, are cited in support of this. It is not a subject on which an opinion can be hastily given; but whether it is assured or not, it is quite possible that, should the other banks place themselves under the scope of the Acts conferring limited liability, the three banks named might feel it desirable to render "assurance doubly sure" by joining with them.

Mr. Mitchell quotes, and with just approval, the opinions expressed by M. Wirth, a well-known German economist, and published by him in the Augsburg *Gazette* on the occasion of the failure of the City of Glasgow Bank. We have only space to quote a few words from M. Wirth's remarks, but they contain the clue to the real cause of the present calamity:—"For that the shareholders are not in a position to exercise an effective control, the history of trade ought by this time to have clearly taught us." This is but too true. Shareholders have no effective control. That they should have a more complete knowledge of the position of a bank, is to our minds essential to its safety. We do not feel ourselves, as we have expressed at greater length elsewhere, the existing form of joint-stock association in Great Britain at the present time suited to the carrying on the business of banking in the best manner. But we agree in the tenor of many of Mr. Mitchell's observations, and generally in the spirit of his very interesting publication throughout. We hope it will have a wide circulation among the shareholders in Scotch banks, who are more than 14,000 in number. Should a second edition be called for, may we suggest to Mr. Mitchell to reprint his valuable observations in a more convenient form? Our own habits of reading compel us to provide accommodation even for folios on our shelves; but the more degenerate libraries of these days find the ordinary octavo size the more convenient. We make this remark in the interest of Mr. Mitchell's readers and of Mr. Mitchell himself.

Date Due

END OF
TITLE